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IN THE

Supreme Court of the United States

October Term, 1949

No. Misc. 139

IKE KOSTROW and BERNARD J. WOOLIS,
Petitioners

v.

COMMONWEALTH OF VIRGINIA AT THE RELATION OF VIRGINIA OAK TANNERY, INCORPORATED,
and
VIRGINIA OAK TANNERY, INCORPORATED,
Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRITS OF CERTIORARI

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I.

INTRODUCTORY STATEMENT

The Commonwealth of Virginia and Virginia Oak Tannery, Incorporated, submit this brief in opposition to petition by Ike Kostrow and Bernard J. Woolis for writs of certiorari to the Supreme Court of Appeals of Virginia and to the Circuit Court of Page County, Virginia; the Supreme Court of Appeals of Virginia having affirmed a judgment of the Circuit Court of Page County, Virginia, whereby Ike Kostrow and Bernard J. Woolis were con-

victed of deliberate, wilful, premeditated, continuing and repeated acts of contempt of court by reason of their violations of an injunction order of the Circuit Court of Page County, Virginia.

II.

STATEMENT OF THE CASE

The contempt proceeding was an aftermath of the inability of Virginia Oak Tannery, Incorporated, and Local 265, International Fur and Leather Workers Union, C. I. O., to agree upon terms of a collective bargaining contract.

Virginia Oak Tannery, Incorporated, hereinafter sometimes called the "Tannery", is a Virginia corporation engaged in tanning leather. Its principle place of business is in Luray, Virginia, where it normally employs about 265 persons.

Local 265, International Fur and Leather Workers Union, C. I. O., hereinafter referred to as the "Union", is affiliated with the Congress of Industrial Organizations and has in the past represented certain employees of the Tannery for the purpose of collective bargaining.

The last contract between the Tannery and the Union expired on April 28, 1948, but thereafter negotiations between the parties which had commenced prior to the expiration date of the contract were continued until May 26, 1948. Meantime a representative of the United States Conciliation Service was called in, but his efforts were unavailing, and on May 26, 1948, the Union called a strike among the employees of the Tannery. There is evidence in the record that the Union representatives walked out while the Conciliator was in conference with representatives of the Tannery for the purpose of getting further concessions from the Tannery, but the merits of the bargaining controversy are not material to this proceeding.

The Union had never complied with the anti-communist affidavit requirement of the Taft-Hartley Act and consequently the jurisdiction of the National Labor Relations Board was not invoked.

On June 5, 1948, the Tannery by its counsel presented to Honorable W. V. Ford, Judge of the Circuit Court of Page County, Virginia, its Bill of Complaint duly verified by W. R. Bowman, its Superintendent, seeking an *ex parte* injunction against the Union and its members, some of whom, including Ike Kostrow, were expressly made parties defendant. Bernard J. Woolis was not made a party defendant. The Bill of Complaint prayed that an injunction issue and that the Union and its members be restrained from certain acts, including excessive picketing of the Tannery's plant in Luray, threats against employees of the Tannery, and acts of violence.

On June 5, 1948, Judge Ford, being satisfied of the Tannery's equity, issued a temporary injunction *ex parte* and directed that the injunction be served forthwith upon the defendants named in the injunction order (R. Vol. I, 10). The injunction order is set forth as *Appendix A* with this brief.

On June 8, 1948, all the defendants named in the Bill of Complaint except the Union filed an answer to the Bill of Complaint (R. Vol. I, 17), and all the defendants by their attorneys moved to vacate and dismiss the injunction (R. Vol. I, 27); and the Union and certain of its members other than Ike Kostrow and Bernard J. Woolis presented to the Court their verified Bill of Complaint praying that an injunction issue against the Tannery prohibiting certain alleged acts of the Tannery (R. Vol. I, 21). Judge Ford declined to issue the injunction (R. Vol. I, 43), and by consent of counsel for all parties all matters were set for hearing on June 21, 1948 (R. Vol. I, 33-34).

By consent of counsel for all parties hearing on the Tannery's application to make the injunction permanent, and on the Union's application for an injunction were consolidated (R. Vol. I, 33-34), and the two proceedings were heard together *ore tenus* on the merits in open court on June 21-22, 1948 (R. Vol. I, 45-47). After the introduction of all evidence for all parties with accompanying Exhibits, and after argument by counsel, and after submission of authorities to the Court by counsel for all parties, Judge Ford took all matters under advisement and ordered that the injunction of June 5, 1948, be continued in force until the further order of the Court (R. Vol. I, 33-34); all as appears from order of the Court entered on June 22, 1948 (R. Vol. I, 33-34).

On July 15, 1948, Judge Ford announced his decision in a memorandum opinion in which he declined to grant an injunction to the Union and ruled that the temporary injunction theretofore granted be made permanent (R. Vol. I, 35-42). Judge Ford's memorandum opinion is set forth as *Appendix B* with this brief.

On the morning of July 26, 1948, an order was entered making the temporary injunction permanent (R. Vol. I, 45-47).

About seven o'clock p. m. on July 26, 1948, counsel for the Tannery appeared before Judge Ford and represented that certain of the defendants in the injunction proceeding other than Ike Kostrow were threatening to burn down the home of one non-striking employee and were threatening to kill other non-striking employees and were otherwise violating the injunction order, and counsel for the Tannery moved for a show cause order against those defendants; and that evening in support of its motion the Tannery presented sworn statements of various persons *ore tenus* in open court (R. Vol. I, 50-52). The defendants were

represented by counsel during the taking of such statements, and after Judge Ford had heard the statements he ordered that the defendants charged with disobedience of the injunction order appear forthwith and show cause why they should not be punished for contempt of court. The show cause order of July 26, 1948, was not directed against Ike Kostrow or Bernard J. Woolis (R. Vol. I, 48-49).

On July 27, 1948, the Union and the defendants named in the show cause order of July 26, 1948, represented by counsel, appeared before Judge Ford pursuant to the order of July 26, 1948, and moved the Court for a continuance (R. Vol. I, 50-52). Judge Ford accordingly continued the hearing upon the show cause order until August 18, 1948 (R. Vol. I, 50-52), and at the same time ordered that the Union give bond in the sum of Three Thousand Dollars ($3,000.00) and that each of the named defendants give bond in the sum of One Thousand Dollars ($1,000.00), all bonds to be conditioned upon appearance on August 18, 1948, and upon compliance meantime with the injunction order (R. Vol. I, 50-52); and thereupon each of the defendants without objection gave bond as required (R. Vol. I, 50-52).

Thereafter the hearing upon the show cause order was continued by Judge Ford from August 18, 1948, to August 19, 1948. On August 19, 1948, the defendants named in the show cause order of July 26, 1948, presented to Judge Ford by counsel their written motion supported by affidavit asking Judge Ford to disqualify himself (R. Vol. I, 53-55); and after hearing argument of counsel, Judge Ford entered an order on August 19, 1948, disqualifying himself from further participation in the proceedings (R. Vol. I, 56).

On August 20, 1948, Honorable Floridus S. Crosby, Judge of the Eighteenth Judicial Circuit of Virginia, was

designated to preside in any further proceedings in the aforesaid cause (R. Vol. I, 57).

On September 21, 1948, counsel for the Tannery appeared before Judge Crosby and represented that further violations of the injunction, including mass picketing, threats of violence, and acts of violence, had occurred, and were continuing, and were occurring daily, and counsel for the Tannery asked that a show cause order issue; and thereupon a show cause order was issued against the Union and certain named defendants including Ike Kostrow and Bernard J. Woolis, directing each of them to appear in the Circuit Court of Page County on September 29, 1948, and show cause why they should not be punished for contempt of court (R. Vol. I, 64-66). Copy of the show cause order is set forth as *Appendix C* with this brief.

Pursuant to the show cause order of September 21, 1948, the Union and certain of the named defendants including Ike Kostrow and Bernard J. Woolis appeared before Judge Crosby on September 29, 1948, by counsel, and submitted motions as follows (R. Vol. I, 464, 491, 502):

(1) To discharge and vacate the show cause order entered July 26, 1948 (R. Vol. I, 62-63)
(2) To release, discharge and vacate the bonds required by the order of July 27, 1948 (R. Vol. I, 60-61);
(3) To vacate and dissolve the injunction order entered on July 26, 1948, whereby the injunction of June 5, 1948, was made permanent (R. Vol. I, 58-59, 69);
(4) To vacate and discharge the show cause order entered on September 21, 1948 (R. Vol. I, 68, 491);
(5) To grant separate hearings on the show cause orders of July 26, 1948, and September 21, 1948 (R. Vol. I, 69, 510).

Counsel for the defendants, including Ike Kostrow and Bernard J. Woolis, submitted a written brief (R. Vol. I, 464) and argued the aforesaid motions fully (R. Vol. I, 456-479, 488-515); and Judge Crosby then overruled the motions (R. Vol. I, 510), all subject to exception by counsel for the defendants.

Counsel for the defendants also represented to the Court that by reason of lack of adequate notice to them they had been unable to prepare a proper defense against the show cause order of September 21, 1948 (R. Vol. I, 492-493, 497); and Judge Crosby accordingly continued the hearing upon the show cause order of September 21, 1948, and also upon the show cause order of July 26, 1948, until October 25, 1948 (R. Vol. 1, 765), and ordered that Virginia Oak Tannery, Incorporated, furnish the defendants a Bill of Particulars upon the show cause order of September 21, 1948 (R. Vol. I, 497, 499, 500, 510) and such Bill of Particulars was furnished counsel for defendants on September 30, 1948, in the presence of the Court (R. Vol. I, 72, 723-725). The Bill of Particulars is set forth as *Appendix D* with this brief.

On September 29-30, 1948, Judge Crosby then heard evidence offered by the Tannery in open court solely upon the single issue whether the defendants named in the show cause order of September 21, 1948, including Ike Kostrow and Bernard J. Woolis, should be required to give bond conditioned upon their compliance with the injunction order pending hearing of the show cause order upon its merits, and conditioned also upon the appearance of the defendants at hearing of the show cause order upon the merits (R. Vol. I, 514). The testimony was given subject to cross-examination by counsel for the defendants (R. Vol. I, 515), and the Court afforded counsel for the defendants opportunity to present evidence in order that the Court might

determine whether the Court should require bond of the defendants conditioned for their compliance with the injunction order and for their appearance in Court on October 25, 1948 (R. Vol. I, 67-71, 515).

Counsel for defendants, however, declined the offer to present evidence at that time (R. Vol. I, 515).

After fifteen witnesses called by the Tannery had been heard on September 29, 1948 (R. Vol. I, 435-687), and when additional witnesses were offered by the Tannery on September 30, 1948 (R. Vol. I, 689-697), Judge Crosby retired to chambers with counsel for all parties and counsel for each side made offers of proof (R. Vol. I, 697-721). Judge Crosby then declined to hear further testimony upon the issue whether the defendants should be required to give bond (R. Vol. I, 718, 730), and issued his order dated September 30, 1948, requiring the Union and certain named defendants including Ike Kostrow and Bernard J. Woolis, severally, to give bond conditioned upon compliance with the injunction order and appearance in Court on October 25, 1948 (R. Vol. I, 67-71).

On Saturday, October 2, 1948, Judge Ford declined to certify the record of proceedings on the injunction upon the ground that he was disqualified from certifying the record, and upon the further ground that the record presented to him was not a correct record. The record was presented to Judge Ford on the sixtieth day after entry of the final injunction order; the sixtieth day being the last day the record could be presented to Judge Ford for certification for appeal purposes under the law of Virginia. Memorandum opinion by Judge Ford when he declined to certify the record appears as an exhibit which was duly made a part of the Record and is set forth as *Appendix E* with this brief.

On Saturday, October 2, 1948, Judge Crosby was served by special delivery mail with copy of petition to the Supreme

Court of Appeals of Virginia in behalf of the Union and certain of its members including Ike Kostrow and Bernard J. Woolis for a Writ of Prohibition.

On October 4, 1948, the petition for Writ of Prohibition was presented to the Supreme Court of Appeals of Virginia, and was ordered filed, and Judge Crosby was given until Tuesday, October 12, 1948, to answer the petition.

For the reason that the petition for a Writ of Prohibition had been filed, Judge Crosby on October 4, 1948, entered an order directing that during the pendency of the petition in the Supreme Court of Appeals of Virginia the order of September 30, 1948, requiring bonds from petitioners be suspended (R. Vol. I, 75-76), and said order of October 4, 1948, was suspended until after the petition for a Writ of Prohibition had been argued on October 13, 1949, and a Writ of Prohibition had been denied on that date; and thereupon Judge Crosby reinstated his order of September 30, 1948 (R. Vol. I, 77-78).

Copies of all proceedings upon the petition for Writ of Prohibition appear as an Exhibit which was duly made a part of the record. Copy of the petition is also set forth as *Appendix F* with this brief, and copy of the answer to the petition is set forth as *Appendix G* with this brief.

Questions which are now raised in the petition for Writs of Certiorari were also raised in the petition for a Writ of Prohibition.

On October 14, 1948, the Tannery filed a Supplement to its Bill of Particulars stating in detail the precise proof which would be offered in support of the show cause order of September 21, 1948, at the hearing on the merits beginning October 25, 1948 (R. Vol. I, 79-89). The Supplement to the Bill of Particulars is set forth as *Appendix H* with this Brief.

On October 25, 26, 27, and 30, and on November 1, 3, 4, 5, 8, 9, 10, and 11, 1948, the matter came on for hearing upon the merits before Honorable Floridus S. Crosby, Judge Designate, and on November 11, 1948, Judge Crosby entered an order (R. Vol. I, 90-100) setting forth his findings of fact which are in part as follows (R. Vol. I, 92-94):

> "On the said October 25, 26, 27, and 30, 1948, and November 1, 3, 4, 5, 6, 8, 9, 10, 1948, the court heard testimony in full for all parties, and on November 11, 1948, the court heard argument of counsel for all parties, and the court having duly considered all said testimony and all exhibits which were admitted in evidence with said testimony, and the aforesaid orders of July 26, 1948, and September 21, 1948, having then been fully heard and considered by the Court upon their merits, and the court being then fully advised of its judgment in the premises, the court on November 11, 1948, announced its judgment in an opinion which was stenographically taken and transcribed and is hereby made a part of the record in these proceedings (R. Vol. IV, 2610-2622), and the court doth now find as a fact beyond a reasonable doubt and doth adjudge that the defendants International Fur and Leather Workers Union, C I O, Local 265, Rubin Campbell, Kelley Lucas, Lee Knott, Richard McCoy, June Campbell, George McCoy, William Cubbage, Theodore Good, Junior Knott, Walter Gochenour, Maceo Fry, Clifford Ellis, Marshall Griffith, Bill Cloud, Earl Price, Leo Cave, Acy Good, Ike Kostrow, Albert Allen, Raymond Atkins, Arnold Gochenour, William Gochenour, Granville Harlow, Loring Rothgeb, Bernard J. Woolis and Elmer Wright, jointly and severally and in conspiracy among themselves and with other members of International Fur and Leather Workers Union, CIO, Local 265, and in conspiracy with representatives of International Fur and Leather Workers Union, CIO, between June 5, 1948, and September 29, 1948, and

also subsequent to September 29, 1948, until and including November 11, 1948, have wilfully, wrongfully, unlawfully, repeatedly and continuously engaged in mass picketing and in threats of violence, and in acts of violence and in abusive language against non-striking employees of Virginia Oak Tannery, Incorporated, and others having business upon the premises of said Virginia Oak Tannery, Incorporated, and likewise have unlawfully assembled and loitered at and near the Main Street entrance and other entrances of said Virginia Oak Tannery, Incorporated, and likewise have trespassed upon the property of said Virginia Oak Tannery, Incorporated, in commission of the aforesaid unlawful acts, and generally have violated the aforesaid injunction of June 5, 1948, as perpetuated as aforesaid; all as appears from stenographic transcript of the aforesaid hearing which was had as aforesaid in these proceedings on October 25, 26, 27, 30, 1948, and on November 1, 3, 4, 5, 6, 8, 9, 10, and 11, 1948, and from the aforesaid exhibits which were admitted in evidence at said hearing, including as exhibits all pleadings and exhibits in the Supreme Court of Appeals of Virginia and the judgment of that Court on the 13th day of October, 1948, denying petition of the defendants named in the aforesaid show cause order of September 21, 1948, for a writ of prohibition against Honorable Floridus S. Crosby, Judge Designate in these proceedings, said transcript and exhibits being hereby made a part of the record in these proceedings.

"Upon Consideration Whereof, the court doth find as a fact beyond a reasonable doubt and doth adjudge, that the defendants, International Fur and Leather Workers Union, CIO, Local 265, Kelly Lucas, Lee Knott, Richard McCoy, June Campbell, George McCoy, William Cubbage, Theodore Good, Junior Knott, Walter Gochenour, Maceo Fry, Clifford Ellis, Marshall Griffith, Bill Cloud, Earl Price, Leo Cave, Acy Good, Ike Kostrow, Albert Allen, Raymond

Atkins, Arnold Gochenour, William Gochenour, Granville Harlow, Loring Rothgeb, Bernard J. Woolis, and Elmer Wright jointly and severally and in conspiracy among themselves and with other members of International Fur and Leather Workers Union, CIO, Local 265, and in conspiracy with representatives of International Fur and Leather Workers Union, CIO, are all guilty of deliberate, wilful, premeditated, continuing, and repeated acts of contempt of court between June 5, 1948, and September 29, 1948, and also subsequent to September 29, 1948, until and including November 11, 1948."

In his order of November 11, 1948, Judge Crosby sentenced Ike Kostrow and Bernard J. Woolis to imprisonment for one year each, and fined them Five Hundred Dollars ($500.00) and Two Hundred Fifty Dollars ($250.00), respectively, for contempt of court (R. Vol. I, 95-96).

Judge Crosby announced his ruling in a statement from the bench which appears in the record (R. Vol. IV, 2610-2622).

Thereafter application for appeal was made to the Supreme Court of Appeals of Virginia, and that Court denied the application on June 22, 1949.

The Questions Presented

The petition for writs of certiorari sets forth five questions which it says are presented by this case (Petition 16-17); but all five questions are essentially questions of fact. The Virginia courts have not decided any new federal question of substance, nor have they decided any question contrary to the decisions of this Court. The Virginia courts have followed the decisions of this Court.

Assuming for the purposes of this brief only that the applicable law is correctly stated in the petition for writs

of certiorari, the record demonstrates that petitioners have been protected in every right accorded them by law, and consequently no question is presented which merits consideration by this Court.

The questions set forth in the petition for writs of certiorari are (Petition 16-17):

(1) Were the petitioners deprived of due process in violation of the Fourteenth Amendment by being convicted without having had an adequate, advance specification of the charges made against them?

(2) Were the petitioners deprived of due process in violation of the Fourteenth Amendment by being convicted and punished for offenses with which they were never charged?

(3) Were the petitioners deprived of their rights under the Fourteenth Amendment, and the First Amendment as incorporated therein, by being convicted for violations of an injunction which infringed their constitutional freedoms of speech and assembly?

(4) Were petitioners deprived of due process in violation of the Fourteenth Amendment by being convicted for violation of an injunction whose terms were too vague and indefinite to establish adequate standards of punishable conduct?

(5) Were petitioners deprived of due process by being convicted in an unfair trial, in that they were prevented from offering evidence in defense to accusations which were made against them and of which they were convicted and in that there was ascribed to them guilt for the conduct of other persons?

III.

ARGUMENT

The evidence leaves no room for doubt that petitioners were guilty of open and notorious defiance of an order of the Circuit Court of Page County, Virginia.

It is true the acts of contempt were violations of a so-called "labor injunction", but the record shows that throughout the proceedings the Circuit Court of Page County accorded petitioners every legal right to which they were entitled, and this case is before the Court now after studious effort by petitioners from the very outset to establish some purported deprivation of individual liberty and thereby shield petitioners from the consequences of their acts, and place them beyond normal restrictions plainly necessary for the maintenance of the public safety and the public welfare.

Petitioners Were Not Deprived of Due Process in Violation Of the Fourteenth Amendment by Conviction Without Adequate Advance Specification of the Charges Against Them

As already stated, the show cause order against Ike Kostrow and Bernard J. Woolis was issued on September 21, 1948, and was returnable on September 29, 1948; and at the outset of the hearing upon it on September 29, 1948, counsel for petitioners represented to the Court that by reason of inadequate notice to them they had been unable to prepare a proper defense against the show cause order.

In extended argument counsel for petitioners contended the show cause order of September 21, 1948, was void because it failed to specify the alleged acts of contempt, but the real purpose of petitioners was not to secure more detailed knowledge of the acts of contempt charged against

them, but to avoid any hearing whatsoever upon the merits, as appears from the record as follows (R. Vol. I, 472):

> "JUDGE CROSBY: Why didn't you ask for a Bill of Particulars?
>
> "MR. FORER: Your Honor, I didn't have to ask for a Bill of Particulars. It is their responsibility to inform us."

What actually resulted on September 29, 1948, was that Judge Crosby ordered a Bill of Particulars to be furnished petitioners, and hearing on the show cause order of September 21, 1948, was continued to October 25, 1948. A Bill of Particulars was furnished on September 30, 1948, and on October 14, 1948, a Supplement to the Bill of Particulars was furnished stating in detail the precise testimony which would be offered to show the violations charged in the show cause order of September 21, 1948.

It is thus clear the Circuit Courth of Page County fully met the requirement that petitioners be apprised of the charges against them.

Moreover petitioners were offered all the evidence against them before preparation of their defense, as appears from statement of counsel for the Tannery on September 30, 1948, as follows (R. Vol I, 690-691, 724):

> "MR. ROBERTSON: If Your Honor please, I know all of us are concerned here with expediting this matter and not to consume the time of the court or ourselves unnecessarily. To that end it has occurred to me that my side put on all of our evidence that we have here to present upon both of these show cause orders and the other side cross-examine them at this time to whatever extent they deem necessary and that that shall constitute our case in chief in support of both of these show cause orders. And then if the other side wishes

further opportunity to prepare the case and to cross-examine witnesses, to present other witnesses, that the court adjourn this matter over under stipulation that all the witnesses that we produce here shall be available hereafter for further cross-examination by the other side if they desire it.

"Now, if we do that, that will mean that we here at this time conclude our case in chief and the other side will have more opportunity to examine the record, to hereafter cross-examine our witnesses, to hereafter put on any witnesses they want, than they could possibly have under any circumstances, and instead of being in anywise prejudiced they would be given a consideration which under no circumstances could they get to that degree.

(R. Vol. I, 694 * * *) "MR. FORER: If Your Honor please, I have just consulted with Mr. Lucas, first of all, and our position is that we will not consent to the procedure suggested by Mr. Robertson if they are going to insist on bond."

Since the foregoing offer was declined, it is difficult to understand how petitioners can now represent to this Court that they at no time had adequate advance specification of the charges against them or opportunity to defend those charges. They refused the most complete and precise specifications imaginable, and there is no justification for their petition that this Court review that issue.

Petitioners Were Not Deprived of Due Process in Violation Of the Fourteenth Amendment by Conviction and Punishment for Offenses With Which They Were Never Charged

Petitioners while represented by one of counsel who now represents them continued to disobey the order of the Circuit Court of Page County openly and almost within sight of

the Court House on the very days when the Court was hearing the contempt proceedings, and when counsel for the Tannery sought to introduce evidence of such violations, counsel for petitioners objected that petitioners had not been charged with such violations and therefore such evidence was not admissable.

The Court ruled that evidence of acts of contempt committed after September 29, 1948,[2] by those convicted of acts of contempt between June 5, 1948,[3] and September 29, 1948, was admissable to show purpose, design and intent of such persons to violate the injunction.

Judge Crosby announced the ruling of the Court as follows (R. Vol. II, 1442-1443):

> "JUDGE CROSBY: Gentlemen, I wish to make a ruling about the admissibility of certain evidence which has already been offered and tentatively accepted by the court. The defendants in this case are being tried for alleged violations of the injunction order between the 5th day of June and the 29th day of September. Evidence has been introduced showing that since the 29th of September other alleged violations of the injunction have taken place. Of course, that, if brought into court and proved, would be a charge of contempt. But it has a double aspect. The court must first determine who is guilty and who is innocent.
>
> "Those that are innocent the rule will be dismissed against. Those who are guilty the court must have information in determining what the measure of punishment should be. Therefore, under the rules of evidence it is entirely proper and it is admissible evidence to show alleged violations of the law after the 29th of September, because such a showing would show design, would show intention and would show willful-

[2]The return date of the show cause order.

[3]The date the injunction order was entered.

ness on the part of the people that are guilty of violating this order. That matter will now be settled once and for all in this trial, and we will proceed accordingly.

Petitioners Were Not Deprived of Their Rights Under the Fourteenth Amendment and the First Amendment as Incorporated Therein By Conviction for Violation of an Injunction Which Infringed Their Constitutional Freedoms of Speech and Assembly

The validity of the injunction order cannot be questioned now, since petitioners failed to perfect an appeal to the Supreme Court of Appeals of Virginia; and even if the Circuit Court of Page County had undertaken to punish petitioners for their failure to obey an order which violates the Fourteenth or First Amendment, their remedy would have been through appeal and not through an insolent defiance of the order of the Court. But the injunction order did not deprive petitioners of any right guaranteed by either the Fourteenth or the First Amendment.

Upon representations made in affidavit form Judge Ford was satisfied of the Tannery's equity, and issued a temporary injunction without notice but with bond in conformity with the Virginia practice. Under Virginia procedure such a temporary injunction may be dissolved upon motion of those enjoined, and such a motion was made in this proceeding on June 8, 1948 (R. Vol. I, 27).

The earliest date convenient to the Court and to all counsel for hearing upon the merits was June 21, 1948, and the proceeding was accordingly set for hearing on that date. At the hearing upon the merits on June 21-22, 1948, there was conclusive evidence of mass picketing, threats, cursing and night-riding; and Judge Ford, who lived in the community and knew the temper of the people, understood the danger of the situation and realized the necessity

for action in the public interest to protect the public welfare. And after he granted an injunction a Tannery truck was ambushed, rocked, and shot up while on a mountain road. A man's skull was fractured by a rock thrown from a group of pickets at one of the Tannery entrances. Pickets with guns threatened persons passing through the picket line. The homes of non-striking employees were rocked at night. Attempts were made at night to turn off a safety valve on a boiler at the Tannery. Nails were buried in Tannery driveways. Non-striking employees' automobiles were damaged. And at different times 100 or more pickets jammed into the narrow entrance to the Tannery property on Main Street in Luray.

Petitioners ask that this Court sanction such activity, but there is no protection for such activity under the Constitution of the United States, and this Court has never sanctioned such activity; and there is no occasion now for the Court to consider whether it will sanction such activity.

Judge Ford heard argument on the issues of freedom of speech and freedom of assembly, and both counsel for the Tannery and counsel for petitioners submitted briefs to him; and his opinion which appears in the record (R. Vol. I, 35-42) and is set forth as *Appendix B* with this brief demonstrates he correctly followed the decisions of this Court.

Petitioners Were Not Deprived of Due Process in Violation of the Fourteenth Amendment by Conviction for Violation of an Injunction The Terms of Which Were Too Vague and Indefinite To Establish Adequate Standards of Punishable Conduct

There is nothing ambiguous or vague about the injunction, and petitioners introduced no evidence tending to show

they did not understand the terms of the injunction. Petitioners intended to violate the injunction, and they chose to violate parts of it which by no stretch of the imagination can be misunderstood. Petitioners were not prejudiced by any ambiguity or vagueness in the injunction, and any contention now that they were prejudiced by any ambiguity or vagueness in the injunction has no substance in fact and does not merit the consideration of this Court.

Petitioners Were Not Denied Due Process by Conviction in an Unfair Trial Through Denial of Opportunity to Present Evidence in Defense of Charges Upon Which They Were Convicted and Adjudged Guilty for the Conduct of Others Wrongfully Ascribed to Them

At the hearing of the injunction proceeding upon the merits on June 21-22, 1948, the Tannery showed strikers were trespassing upon its property; and at the hearing on June 21-22, 1948, no defense on account of any prescriptive right was made, nor is any such defense made in the pleadings.

During the hearing on the show cause orders, however, the Unioin sought to show there was a prescriptive right of way by user in the public through the Tannery property where trespasses had occurred; but Judge Crosby refused to hear evidence of any prescriptive right of way in the public through the property of the Tannery. He rightly declined to try title to land in a contempt proceeding. If petitioners committed the acts charged against them, they were not protected by any prescriptive right through the property of the Tannery; and if they were not guilty of the acts charged against them, no question of prescriptive

right is presented. In either event, therefore, any question of prescriptive right is irrelevant.

At the hearing upon the show cause orders counsel for petitioners proposed to call each and every member of the Union to deny *seriatim* every charge against the Union, but the Court declined to hear such denials from some 200 witnesses upon the ground that there must be some limit to such negative testimony. The Court permitted the President of the Union and the Chairman of its Strike Committee to testify the Union had never countenanced any act of contempt charged against it. The Court ruled also that no individual could be found guilty except upon direct evidence, and no individual was denied opportunity to testify in his own behalf. Neither petitioner availed himself of such opportunity, and the Union has not applied for writs of certiorari. As to individual defendants, the Court ruled it would convict only on direct evidence, and the direct evidence against petitioners is overwhelming and conclusive.

Summary of the Case

Argument that petitioners were deprived of due process of law is without merit. The contention that defendants had no adequate notice of the charges against them was made at the opening of the proceedings on September 29, 1948, and the Court then heard the contention of defendants and argument of counsel upon those contentions; and the Court then continued hearing upon the alleged guilt of the defendants until October 25, 1948, nearly one month, and ordered that defendants be given a Bill of Particulars setting forth the facts of the alleged contempt.

In addition to that, the Tannery on September 29-30, 1948, put on much of its evidence to prove the alleged viola-

tions of the injunction order and to demonstrate the necessity of putting the defendants under bond; and on September 30, 1948, counsel for the Tannery read the gist of the remainder of the evidence against the defendants to the Court and to counsel for defendants.

Counsel for the Tannery offered furthermore on September 30, 1948, to put on their entire case; to furnish defendants a transcript of the testimony in order that defendants might study all the evidence against them and prepare their defense; and counsel for the Tannery offered to have all witnesses against the defendants available for any cross-examination desired at the hearing on October 25, 1948. All such offers were refused by counsel for defendants.

On September 30, 1948, defendants were furnished a Bill of Particulars (*Appendix D* with this brief), and on October 14, 1948, counsel for defendants were furnished a Supplement to the Bill of Particulars (*Appendix H* with this brief).

It is therefore a fact that defendants were given as complete notice of the charges against them as can be imagined, and that they were given more than sufficient time to prepare their defense.

Yet defendants come now before this Court and claim they were given no notice of the charges against them, although they declined to accept a transcript of the evidence upon the charges against them when such a transcript was offered to them before any hearing upon the merits.

In Re Oliver, 333 U. S. 257 (1948), and *Cook* v. *United States*, 267 U. S. 517 (1925), hold that a person charged with contempt of court is entitled to procedural due process, to-wit:

Notice of the charge
Opportunity to defend
Opportunity to have counsel
Open hearing.

Neither *In Re Oliver* nor *Cook* v. *United States* holds or intimates that any particular procedure is required to guarantee the prescribed rights, and petitioners were accorded all their rights in a trial court and in an appellate court determined to insure and guarantee such rights.

At the hearing of the show cause orders upon the merits, beginning on October 25, 1948, Judge Crosby followed the rulings of the Court in *United States* v. *United Mine Workers of America* (1947), 330 U. S. 258.

At the hearing upon the merits beginning on October 25, 1948, after the hearing had been continued from September 29, 1948, the Court excluded all testimony of alleged violations of the injunction order subsequent to September 29, 1948, the return date of the order, to establish the alleged guilt of any defendant, upon the ground that no defendant could lawfully be convicted under the show cause order of September 21, 1948, for any alleged act of contempt committed after September 29, 1948, the return date of that order. The Court ruled that the defendants named in the show cause order of September 21, 1948, could be convicted of violations of the injunction order through September 29, 1948, because they had been furnished a Bill of Particulars on September 30, 1948, alleging that violations of the injunction order were continuing up until the time the Bill of Particulars was filed.

The Court admitted evidence of alleged violations of the injunction order after September 29, 1948, only as tending to show purpose, design and intent to violate the injunction.

The Court excluded all circumstantial evidence as inad-

missable to prove the guilt of any individual defendant upon the ground that the alleged guilt of an individual must be proved by direct evidence which connects the individual with the alleged violation of the injunction.

In view of the ruling of the Court that the alleged guilt of an individual must be proved by direct evidence of his violation of the injunction (12 American Jurisprudence, Contempt, p. 441, Section 74), the Court declined to permit counsel for defendants to question each of those named in both show cause orders, and the Union membership generally *seriatim* upon each alleged violation of the injunction, and have each witness testify *seriatim* that the Union had not been guilty of any such violation. The Court explained that no affirmative evidence had been introduced to warrant the wholesale introduction of such negative testimony.

The Tannery introduced evidence tending to prove certain defendants had trespassed upon its property, and counsel for defendants offered testimony tending to show the public has a right of way through the property by prescription. The Court correctly excluded evidence of such a right of way upon the ground that no issue of any prescriptive right was raised by the pleadings; and if Ike Kostrow and Bernard J. Woolis were guilty of the acts charged against them, they violated the prescriptive right they claimed, and consequently the prescriptive right they claimed was irrelevant to the proceeding.

The Court permitted Tannery employees to testify that threats against other employees had been reported to them in the ordinary course of their employment and in the regular discharge of their duties.

The contention that the conviction of petitioners violates their right to freedom of assembly and freedom of speech because the injunction itself violates such rights, is refuted

in the memorandum opinion delivered by Judge Ford on July 15, 1948, when he ruled he would perpetuate the temporary injunction he had granted on June 5, 1948 (*Appendix B* with this brief).

Petitioners contend the injunction is vague and indefinite, but the injunction (*Appendix A* with this brief) is clear and unmistakable; and it was fully understood, as was found by the Court in its order of November 11, 1948, when the Court declared the violations of the injunction were deliberate, wilful, premeditated, continuing and repeated (R. Vol. I, 90-100).

The contention that petitioners did not receive a fair trial and were denied opportunity to defend themselves is contrary to the finding of Honorable William V. Ford, Judge of the Circuit Court of Page County, Virginia, who granted a preliminary injunction and subsequently made it permanent before he disqualified himself at the instance of defendants; is contrary to the finding of Honorable Floridus S. Crosby who was designated to sit for Judge Ford; is contrary to the unanimous finding of the Supreme Court of Appeals of Virginia when that Court denied petitioners' Application for a Writ of Prohibition against Judge Crosby; and is contrary to the unanimous finding of the Supreme Court of Appeals of Virginia when it denied defendants' application for appeal.

IV.

CONCLUSION

Effort to build up and transform a run of the mine proceeding into a *cause celebre* has been made persistently by counsel for petitioners from the very first moment of the injunction proceeding. Counsel for petitioners have raised

the cry of an unfair trial continuously, but the record shows the Circuit Court of Page County was meticulous to protect the rights of petitioners, and that Judge Ford and Judge Crosby were long suffering in restraint and patience.

Despite the flagrant contempt of the petitioners, the Circuit Court of Page County, Virginia, and the Supreme Court of Appeals of Virginia scrupulously protected every right of the petitioners, and petitioners Kostrow and Woolis are now at liberty and unpunished; and counsel for the Tannery are advised that neither Kostrow nor Woolis was in Virginia when the Circuit Court of Page County granted them a stay of execution, and that neither of them has been in Virginia since the stay of execution was granted, and that neither of them is now in Virginia. They were given a trial in which evidence was taken on ten days upon the order for them to show cause why they should not be punished for contempt. The actual trial upon the show cause order against Kostrow and Woolis began on October 25, 1948, and did not end until November 11, 1948; and the trial procedure has now been considered by nine different judges; those judges being Honorable William V. Ford, Honorable Floridus S. Crosby and the Chief Justice and all the Justices of the Supreme Court of Appeals of Virginia. All nine judges considered all questions the petitioners now desire to have reviewed, and every judge who has considered the questions which Kostrow and Woolis now ask this Court to review has ruled those questions are all without merit.

Ike Kostrow and Bernard J. Woolis violated the injunction order of the Circuit Court of Page County, Virginia, deliberately, wilfully, premeditatedly, continuously and repeatedly. They have been given a fair trial and have been adjudged guilty. The facts as revealed by the record do not support the petition for writs of certiorari, and no question

is raised which merits consideration by this Court. The petition for writs of certiorari should therefore be denied.

Respectfully submitted,

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October 14, 1949

APPENDIX A

Record, Vol. I, 10-13

CIRCUIT COURT OF THE COUNTY OF PAGE, ON SATURDAY, THE 5TH DAY OF JUNE, IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND FORTY-EIGHT.

PRESENT: THE HONORABLE W. V. FORD, JUDGE

VIRGINIA:
IN THE CIRCUIT COURT OF PAGE COUNTY

IN CHANCERY

VIRGINIA OAK TANNERY, INCORPORATED, A CORPORATION,
Complainant

v.

INTERNATIONAL FUR AND LEATHER WORKERS UNION, C I O, LOCAL 265, PHILIP W. BROWN, PRESIDENT, EVERETT ATKINS, VICE-PRESIDENT, PALMER B. JUDD, SECRETARY, THEODORE GOOD, CHAIRMAN STRIKE COMMITTEE, CLARENCE PULLEN, STEWARD, JUNIOR KNOTT, STEWARD, WALTER GOCHENOUR, MACEO FRY, CLIFFORD ELLIS, MARSHALL GRIFFITH, RUSSELL EDWARDS, BILL CLOUD, AUSTIN COMER, EARL PRICE, LEO CAVE, HARVEY STEED, EDWARD BLOSSER, ACY GOOD, LESTER RICHARD, JACK KNIGHT, RALPH CATON, AND FRANK BROWNSTONE, DISTRICT SUPERVISOR, IKE KOSTROW, INTERNATIONAL REPRESENTATIVE, AND EDWARD INCOLINGO, INTERNATIONAL REPRESENTATIVE,

Defendants.

This day came the complainant, Virginia Oak Tannery, Incorporated, and presented to this court its bill of complaint under oath, the affidavit of an officer thereof being thereto attached, and the court being satisfied from said bill of complaint and the said affidavit of the complainant's equity, an injunction is awarded complainant in accordance with the prayer of its bill of complaint and the Court doth order and decree that the defendants named in the caption above and all members of Local Union 265 of International Fur And Leather Workers Union, C I O, and all persons who are engaged in a strike or picketing at or near the entrance to complainant's tannery situate on Main Street, Luray, Virginia, and at the "Farm" entrance to the tannery from the Eastside Highway (Route 12), and at the entrance leading to the tannery from the old Springfield Road, and their sympathizers engaged with them in the prosecution of such strike and picketing, their agents, representatives, attorneys and servants are accordingly enjoined and restrained until the further order of this Court from in any manner whatsoever interfering with, hindering, obstructing, or stopping any person engaged in the employ of the complainant or having legitimate business upon the premises of complainant by way of threats of personal injuries, intimidation, suggestion of danger or threats of violence of any kind or from interfering by violence or threats of violence in any manner with any person desiring to be employed by the complainant and from inducing or attempting to compel and induce by threats, intimidation, force or violence or putting in fear or suggestions of danger any of the employees of the complainant so as to cause them to fail or refuse to perform any of their duties as such employees; and from preventing any person by threats, intimidation, force or violence or suggestions of danger or violence from entering into or continuing in the employ of

the complainant and from aiding or assisting any person or persons in committing any of the said acts; and from assembling, loitering or congregating for the purpose of doing or aiding or encouraging others in doing any of said unlawful acts or things, and from doing any acts or things in furtherance of any conspiracy or combination among them or any of them to obstruct or interfere with complainant, its officers or employees in the free or unrestrained control and operation of the complainant's property and business; and also from ordering, directing, aiding, assisting or in any manner abetting any persons committing any or either of the aforesaid acts, and the Court doth enjoin the persons on strike as aforesaid and their sympathizers engaged with them in the prosecution of said strike and of the picketing from picketing, congregating or loitering at or in the vicinity of the complainant's said entrances; except that not exceeding 3 persons may peacefully picket in the vicinity of each entrance and that they and all others engaged in the prosecution of said strike and picketing are further restrained from the use of abusive, slanderous or threatening language to or with respect to the employees of the complainant or its intended employees and that more than one of them at a time are further enjoined and restrained from approaching such employees or intended employees and that all of them are enjoined from obstructing such employees or intended employees who are unwilling to listen to their persuasion or arguments by following or dogging their ways; and the Court doth further order and direct the defendants and members of said Local 265, International Fur And Leather Workers Union, C I O, to see that this order insofar as the same relates to the collecting of pickets and to congregating and loitering on the part of members of said union or strikers or their sympathizers be enforced. And the Court doth further order and

direct the defendants and each of them not to trespass upon the property of the complainant.

This injunction shall be effective upon the defendants, respectively upon service of this order upon the denfendants, respectively, from the date hereof for a period of sixty days thereafter and at the expiration of that time such injunction shall stand dissolved, unless before the expiration thereof it is enlarged or a further injunction is granted. But this injunction shall not take effect until bond be given before the Clerk of this Court in the penalty of $1,000.00 with such corporate surety as may be approved by the Clerk with condition to pay all such costs as may be awarded against the complainant and all such damages as may be incurred in case the injunction shall be dissolved; and the Sheriff is directed to serve a copy of this order forthwith upon each of the defendants.

APPENDIX B

Record Vol. I, 35-42

VIRGINIA:

IN THE CIRCUIT COURT OF PAGE COUNTY

No. 568

VIRGINIA OAK TANNERY, INC., A CORP.,
Complainant

v.

INTERNATIONAL FUR AND LEATHER WORKERS UNION, C I O, LOCAL 265, &C
Defendants

No. 570

LOCAL 265, INTERNATIONAL FUR AND LEATHER WORKERS UNION (CIO) &C
Complainants

v.

VIRGINIA OAK TANNERY, INC., A CORP.
Defendant

The above entitled causes were matured and came on to be heard by consent of parties in the Circuit Court of Page County on June 21, 1948, and were likewise by consent heard ore tenus.

The court did not receive the transcript of the testimony in this case until the 2nd day of July, 1948, and consequently, owing to press of trial work in both the Page and Rock-

ingham Circuit Courts, will not have either the time or opportunity to prepare a formal opinion analyzing both the facts and law as it would like to do but will only be able to write a memorandum setting forth its finding of facts and law applicable thereto.

The testimony of the witnesses in these two cases was in sharp and direct conflict and there is no possible way of reconciling said testimony. The court had the opportunity of hearing and observing each witness while testifying, and in addition thereto, besides being born and raised in this community, has visited since the above hearing each entrance to the tannery property in order to observe its physical location and the surrounding territory.

The court is of the opinion that the credible testimony adduced in these causes justifies the following findings of facts: That the picketing at all entrances of the tannery previous to the temporary injunction issued in this cause on June 5, 1948, constituted mass picketing for the purpose of hindering and preventing pursuit of lawful work; that previous to June 5th more than five (5) pickets were on picket lines at one time, and this is especially true as to the Main Street entrance and that numerous members of the Union congregated at the N & W Railway watch-box and at the end of the pavement in front of the building just west of the entrance to the tannery; that this congregation of union members was practically a part of the picket line and if the same occurred after the entry of the temporary injunction might constitute a violation thereof; that at various times members of the Union, in a body of four or five people, threatened employees desiring to work with bodily injury and injury to their property, obstructing and interfering with entrances to and egress from the tannery; that certain workers or employees of the tannery were intimidated from crossing the picket lines and had to be

guarded or convoyed through said picket lines; that trucks hauling both passengers and freight were stopped at the picket line and had to be convoyed through the same; that groups or members of the union followed certain workers at the tannery when they returned home from work; that groups of union members visited the homes of workers at the tannery upon various occasions and threatened and intimidated them in attempting to prevent them from working.

In starting its investigation of these cases the court bases its investigation upon the cardinal and well established legal principals that employees may lawfully strike and peacefully picket.

It is equally well established in Virginia that the picketing must be peaceful, free from intimidation and threats, and that the workers at the 'struck plant' must not be threatened or intimidated at any time or place.

> " 'Picketing' is one of the methods usually adopted by 'strikers' in furthering their purposes, and here, as in the matter of argument and persuasion, they have a right to pursue that method, so long as its use does not become unlawful."
>
> "It is unlawful for workmen to collect in crowds about the establishment of an employer whose employ they have quit; and it is unlawful for them to follow workmen, who have taken their places, to their homes and interfere with them along the public streets for the purpose of intimidating or coercing them in quitting their employment. * * * Pickets may be established about factories and places where non-union men are employed, providing the number of pickets is not so great as to overawe or intimidate the non-union workmen, or in any manner obstruct the street or sidewalk, and providing the so-called pickets confine themselves to the use of persuasion or argument with the non-

> union employees; but, if the watching or picketing is carried to an extent which causes intimidation or amounts to coercion, compulsion or molestation in any form of either the non-union workmen or their employers, it is unlawful, and the combination making use of such unlawful means is a conspiracy" Everett Waddey Co., v. R. T. Union, 105 Va. 188.

Furthermore, the General Assembly of Virginia passed an Act, approved March 25, 1946, now embodied in Michie's 1946 Supplement to the Code of Virginia as Section 4711a which provides as follows:

> "It shall be unlawful for any person singly or in concert with others to interfere or attempt to interfere with another in the exercise of his right to work or to enter upon the performance of any lawful vocation, by the use of force, threats of violence or intimidation, or by the use of insulting or threatening language directed toward such person, to induce or attempt to induce him to quit his employment or refrain from seeking employment.
>
> "It shall be unlawful for any person to engage in picketing by force or violence, or to picket alone or in concert with others in such manner as to obstruct or interfere with free ingress or egress to and from any premises, or to obstruct or interfere with free use of public streets, sidewalks, or other public ways."

The court is of the opinion that the facts found above constitute a violation of the laws of this Commonwealth.

The only remaining question to be determined by the court is whether or not the law as enunciated in Waddey v. R. T. Union, *Supra*, and the Act of 1946, Section 4711a of the Code, constitute an abridgement of the right of free speech and assembly and the other rights guaranteed to the

citizens by the First and Fourteenth Amendments to the Federal Constitution.

The court has reached a conclusion that peaceful picketing is a manifestation of free speech and the rights of assembly guaranteed under both the First and Fourteenth Amendments. The entire question of picketing is fully discussed in the Thornhill case.

The right of free speech, assemblage and other rights granted under the First and Fourteenth Amendments applies only to peaceful and legal picketing and does not inhibit the states or the courts, either state or Federal, from restraining mass picketing, intimidation, threats or damage to the person or destruction of property or otherwise reasonably limiting the picketing in connection with any strike when said restraint is reasonable under all the circumstances of that particular case. This doctrine is fully discussed in the Meadowmoor Dairies case and carefully distinguishes that case from the Thornhill case, and states that there is no conflict between the two cases.

Upon a reading of all the United States cases cited to the court and hereinafter listed, the court is of the opinion that the temporary injunction heretofore granted in Virginia Oak Tannery, Inc., A Corp. vs. International Fur and Leather Workers Union, C I O, Local 265, &c., is a reasonable restraint of the picketing to be allowed and does not violate any other rights of the Union or its members, and in no way infringes upon any rights guaranteed by the First and Fourteenth Amendments of the United States Constitution.

Near v. Minnesota, 283 U. S. 697
Thornhill v. Alabama, 310 U. S. 88
Carlson v. California, 310 U. S. 516
A.F.L. v. Swing, 312 U. S. 312
Schneider v. Irvington, 308 U. S. 147

Cantwell v. Connecticut, 310 U. S. 296
Lovell v. Griffin, 303 U. S. 444
Hague v. C. I. O. 307 U. S. 496
Hotel and Restaurant Employees v. W.E.R.B., 315 U. S. 437 (1941)
Allen-Bradley Local No. 1111 v. W.E.R.B., 315 U. S. 740 (1942)
Carpenters and Joiners Union v. Ritters Cafe, 315 U. S. 722 (1940)
Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U. S. 287 (1941)
American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184 (1921)

Therefore, the court is of the opinion that the prayer of the Virginia Oak Tannery, Inc., A Corp., v. International Fur And Leather Workers Union, CIO, Local 265, &c (No. 568) for an injunction should be granted and the court doth adjudge, order and decree that the temporary injunction heretofore granted in this cause shall be made permanent.

Counsel will prepare the decree as above directed. The Court is further of the opinion that the evidence adduced in these causes wholly fails to sustain the allegations contained in the bill of complaint of the International Fur And Leather Workers Union, C I O, Local 265, &c v. Virginia Oak Tannery, Inc., No. 570. The testimony failed to show that the Virginia Oak Tannery attempted to provoke any violence or breach of the peace; nor that any of its agents, officers, or employees harrassed any members of the Union or made any threats relative to imprisonment or litigation, that the only evidence introduced was as to an interview with one or two members of the union relative to evidence to be introduced in connection with the bill for an injunction, which was entirely peaceful and with the full consent of the union members; nor that any attempt was made to force

drinks on union members by any agents or employees of the Virginia Oak Tannery; nor that the lives of any of the pickets were endangered by the trucks of the Tannery or employees. The court thinks it proper to state that after Gochenour's testimony as to having had a warrant sworn out against Daniel Painter for reckless driving in that he attempted to run him down at the Main Street picket line with his car, the court on its own volition took occasion to examine the record of the Trial Justice Court as to the disposition of said charge, and found that Painter was found not guilty and that the testimony by Gochenour and his witnesses on said trial was of a very suspicious nature. The union did not even attempt to support its allegation that the Virginia Oak Tannery had caused the issuance of a false and fraudulent radio announcement.

The court is of the opinion that the International Fur And Leather Workers Union, C I O, Local 265, has completely failed to substantiate any of the allegations of its bill for an injunction and, furthermore, that with the possible exception of running a union man down with an automobile, that the said plaintiff has a complete, full and adequate remedy at law for the grievances complained of. See National Labor Relations Act and the Taft-Hartley Act.

Therefore the court doth adjudge, order and decree that the prayer of the bill in International Fur And Leather Workers Union, C I O, Local 265, &c v. Virginia Oak Tannery, Inc., A Corp., (No. 570) and the injunction prayed for therein be denied and the bill dismissed.

Counsel will prepare decree in accordance herewith.

s/ W. V. FORD

July 15, 1948.

APPENDIX C

Record, Vol. I, 64-66

VIRGINIA:

IN THE CIRCUIT COURT OF PAGE COUNTY

IN CHANCERY

VIRGINIA OAK TANNERY, INCORPORATED, A CORPORATION,
Complainant

v.

INTERNATIONAL FUR AND LEATHER WORKERS UNION, C I O, LOCAL 265, PHILIP W. BROWN, PRESIDENT, EVERETT ATKINS, VICE-PRESIDENT, PALMER B. JUDD, SECRETARY, THEODORE GOOD, CHAIRMAN STRIKE COMMITTEE, CLARENCE PULLEN, STEWARD, JUNIOR KNOTT, STEWARD, WALTER GOCHENOUR, MACEO FRY, CLIFFORD ELLIS, MARSHALL GRIFFITH, RUSSELL EDWARDS, BILL CLOUD, AUSTIN COMER, EARL PRICE, LEO CAVE, HARVEY STEED, EDWARD BLOSSER, ACY GOOD, LESTER RICHARD, JACK KNIGHT, RALPH CATON, AND FRANK BROWNSTONE, DISTRICT SUPERVISOR, IKE KOSTROW, INTERNATIONAL REPRESENTATIVE, AND EDWARD INCOLINGO, INTERNATIONAL REPRESENTATIVE,

Defendants.

This day came the complainant, by counsel, and represented to the court that the defendants and persons, International Fur and Leather Workers Union, CIO, Local 265, Theodore Good, Chairman Strike Committee, Junior Knott, Steward, Walter Gochenour, Maceo Fry, Clifford Ellis, Marshall Griffith, Bill Cloud, Earl Price, Leo Cave, Acy Good, Frank Brownstone, District Supervisor, Ike Kos-

trow, International Representative, Albert Allen, Raymond Atkins, Luther Cave, Arnold Gochenour, William Gochenour, Granville Harlow, Claude Richard, Loring Rothgeb, Bernard J. Woolis, and Elmer Wright, are all guilty of violation of the injunction order which was entered in this proceeding on the 5th day of June, 1948, and the complainant, by counsel, moved the court for a show cause order against each of the said above named defendants and persons directing each of them to appear before the court on the 29th day of September, 1948, at 9:30 A.M., and show cause, if any they can, why each and all of them should not be fined, penalized and imprisoned or otherwise punished for contempt of court.

Upon consideration whereof, the court doth adjudge, order and decree that the said International Fur and Leather Workers Union, CIO,, Local 265, Theodore Good, Chairman Strike Committee, Junior Knott, Steward, Walter Gochenour, Maceo Fry, Clifford Ellis, Marshall Griffith, Bill Cloud, Earl Price, Leo Cave, Acy Good, Frank Brownstone, District Supervisor, Ike Kostrow, International Representative, Albert Allen, Raymond Atkins, Luther Cave, Arnold Gochenour, William Gochenour, Granville Harlow, Claude Richard, Loring Rothgeb, Bernard J. Woolis, and Elmer Wright do appear before the Circuit Court of Page County on Wednesday, September 29, 1948, at 9:30 A.M., and show cause if any they can, why each and all of them should not be fined, penalized and imprisoned or otherwise punished for contempt of court.

And the Sheriff is directed to serve a copy of this order forthwith upon each of the said defendants and persons, International Fur and Leather Workers Union, CIO, Local 265, Theodore Good, Chairman Strike Committee, Junior Knott, Steward, Walter Gochenour, Maceo Fry, Clifford Ellis, Marshall Griffith, Bill Cloud, Earl Price, Leo Cave,

Acy Good, Frank Brownstone, District Supervisor, Ike Kostrow, International Representative, Albert Allen, Raymond Atkins, Luther Cave, Arnold Gochenour, William Gochenour, Granville Harlow, Claude Richard, Loring Rothgeb, Bernard J. Woolis, and Elmer Wright.

Enter

Floridus S. Crosby
Judge Designate
5:35 P.M. Sept. 21, 1948

APPENDIX D

Record, Vol. I, 72-74

VIRGINIA:

IN THE CIRCUIT COURT OF PAGE COUNTY

COMMONWEALTH OF VIRGINIA AT THE RELATION OF VIRGINIA OAK TANNERY, INCORPORATED, A CORPORATION,
Complainant

v.

INTERNATIONAL FUR AND LEATHER WORKERS UNION, C I O, LOCAL 265, PHILIP W. BROWN, PRESIDENT, EVERETT ATKINS, VICE-PRESIDENT, PALMER B. JUDD, SECRETARY, THEODORE GOOD, CHAIRMAN STRIKE COMMITTEE, CLARENCE PULLEN, STEWARD, JUNIOR KNOTT, STEWARD, WALTER GOCHENOUR, MACEO FRY, CLIFFORD ELLIS, MARSHALL GRIFFITH, RUSSELL EDWARDS, BILL CLOUD, AUSTIN COMER, EARL PRICE, LEO CAVE, HARVEY STEED, EDWARD BLOSSER, ACY GOOD, LESTER RICHARD, JACK KNIGHT, RALPH CATON, AND FRANK BROWNSTONE, DISTRICT SUPERVISOR, IKE KOSTROW, INTERNATIONAL REPRESENTATIVE, AND EDWARD INCOLINGO, INTERNATIONAL REPRESENTATIVE,
Defendants.

BILL OF PARTICULARS

Pursuant to verbal direction of the court that Virginia Oak Tannery, Incorporated, furnish a bill of particulars within five days from September 29, 1948, to those against whom an order was entered on September 21, 1948, directing them to appear before the Circuit Court of Page County on Wednesday, September 29, 1948, at 9:30 a.m., and show cause why each and all of them should not be punished for

contempt of court by reason of their violation of an injunction order entered on June 5, 1948, and perpetuated by order entered on the 26th day of July, 1948, the said Virginia Oak Tannery, Incorporated, says that each and all of those against whom said show cause order was issued repeatedly, intentionally, continuously, and unlawfully since June 5, 1948, have engaged in mass picketing, in threats of violence and in acts of violence, and in abusive and insulting language against non-striking employees of said Virginia Oak Tannery, Incorporated, and others having business upon the property of said Virginia Oak Tannery, Incorporated, and have unlawfully assembled and loitered at, about and near the Main Street entrance and the other entrances of the said Virginia Oak Tannery, Incorporated, and have trespassed upon the property of the said Virginia Oak Tannery in commission of all the aforesaid unlawful acts; and all those against whom the aforesaid show cause order was issued have repeatedly, intentionally, continuously, and unlawfully generally violated each and every provision of the aforesaid injunction order of June 5, 1948, as perpetuated as aforesaid; and all those against whom said show cause order was issued are now repeatedly, intentionally, continuously and unlawfully violating each and every provision of said injunction order of June 5, 1948, as perpetuated as aforesaid.

Virginia Oak Tannery, Incorporated, reserves the right to amend its Bill of Particulars if, as and when it may be so advised.

VIRGINIA OAK TANNERY, INCORPORATED

By ARCHIBALD G. ROBERTSON

JOHN M. SWETNAM

FRANCIS V. LOWDEN, JR.

Counsel

APPENDIX E

Exhibit with Record

VIRGINIA:

IN THE CIRCUIT COURT OF PAGE COUNTY.

VIRGINIA OAK TANNERY, INCORPORATED, A CORPORATION,
Complainant

v.

INTERNATIONAL FUR AND LEATHER WORKERS UNION, C I O, LOCAL 265, ET ALS.

Defendants.

The Certificate of Exceptions in the above entitled cause, purporting to be prepared pursuant to Rule 21 of the Court of Appeals, was tendered to me at noon on the 24th day of September, 1948, that being the sixtieth day after the entry on July 26, 1948, of the decree granting a permanent injunction against the above named defendants.

By an order entered in this cause on the 19th day of August, 1948, I disqualified myself to further hear any proceedings herein on the ground that 'I am so situated in respect to the above case as to render it improper for me to preside in further proceedings therein'. It is immaterial whether said order was entered pursuant to the provision of Section 4917 or Section 5898 of the Code, the disqualification is on the ground that my situation rendered it improper for me to preside. The disqualification on said ground is different and is separate and apart from any other ground that prevents the regular judge of a circuit from presiding at the trial of any case or cause. Acres v. Commonwealth 155 Va. (1946), 156 (2nd) S. E. 763.

In my opinion Section 6253 of the Code does not apply

to this case. I was both the regular judge of this circuit and also the presiding judge at the trial of all proceedings herein up to and including the entry of the order of disqualification therein, which was entered pursuant to and in conformity with the suggestion and motion of the defendants that I was so situated as to render it improper for me to further preside herein. If it was ever improper for me to preside herein, the grounds of said disqualification still exist and I continue to be disqualified to take any action.

The signing of any Certificate of Exceptions is not entirely a ministerial act but also involves the exercise of certain judicial discretion. In the instant case the transcript of the proceedings herein would have to be considerably corrected and revised. The transcript of the evidence and of the proceedings in chambers had on the 19th day of August, 1948, have many errors and are in some instances jumbled. The transcript as presented contained copies of papers that cannot properly be made a part of any record, and the Certificate itself is wholly inadequate in a chancery case having evidently been copied from a certificate in a criminal case.

Therefore I am of the opinion that the said certificate was erroneously presented to me for authentication and that I am wholly without authority to sign the same; that any action taken by me in the premises would have been a nullity; and that the same should have been presented to the judge designated to preside in my place and stead. I so suggested to counsel when the same was handed to me on September 24th. Any judge designated to sit in my place in this case had all the jurisdiction and powers to perform any and all acts that could have been done or performed by the presiding judge at the trial and was fully authorized and empowered to sign said certificate of exceptions, notwithstanding the fact that he was not presiding at the time

that the evidence was taken or any other act done or performed. Southall v. Evans, 114 Va. 461.

In view of my foregoing conclusions I most respectfully decline to sign said certificate, and return said transcript to the Clerk's Office of the Circuit Court of Page County.

Given under my hand this 2nd day of October, 1948.

s/ W. V. FORD
Judge of the Circuit Court
of Page County, Virginia

APPENDIX F
Exhibit with Record

VIRGINIA:

IN THE SUPREME COURT OF APPEALS OF VIRGINIA

THEODORE GOOD, JUNIOR KNOTT, WALTER GOCHENOUR, MACEO FRY, CLIFFORD ELLIS, MARSHALL GRIFFITH, BILL CLOUD, EARL PRICE, LEO CAVE, ACY GOOD, IKE KOSTROW, ALBERT ALLEN, RAYMOND ATKINS, ARNOLD GOCHENOUR, WILLIAM GOCHENOUR, GRANVILLE HARLOW, LORING ROTHGEB, BERNARD J. WOOLIS, ELMER WRIGHT, AND LOCAL 265, INTERNATIONAL FUR AND LEATHER WORKERS UNION

v.

FLORIDUS S. CROSBY, JUDGE-DESIGNATE FOR CHANCERY CAUSE NO. 570 IN THE CIRCUIT COURT OF PAGE COUNTY, VIRGINIA

To the Honorable the Justices of the Supreme Court of Appeals:

Your petitioners, Theodore Good, Junior Knott, Walter Gochenour, Maceo Fry, Clifford Ellis, Marshall Griffith, Bill Cloud, Earl Price, Leo Cave, Acy Good, Ike Kostrow, Albert Allen, Raymond Atkins, Arnold Gochenour, William Gochenour, Granville Harlow, Loring Rothgeb, Bernard J. Woolis, Elmer Wright, and Local 265, International Fur and Leather Workers Union, respectfully represent as follows:

1. On the fifth day of June, 1948, The Honorable Judge William V. Ford of the Circuit Court of Page County, Virginia, issued without notice a temporary injunction, on the complaint of Virginia Oak Tannery, Incorporated against Local 265, International Fur and Leather Workers

Union, and twenty-four named individuals (Chancery No. 570). None of your petitioners, with the exception of said Local 265 and Theodore Good, Junior Knott, Walter Gochenour, Maceo Fry, Clifford Ellis, Marshall Griffith, Bill Cloud, Earl Price, Leo Cave, Acy Good, Ike Kostrow, were or are parties to the suit instituted by said complaint.

2. Said temporary injunction enjoined numerous activities in connection with a labor dispute between said Local 265 and said Virginia Oak Tannery, Incorporated, at the tannery operated by the latter in Luray, Virginia.

3. On July 26th, 1948, the Honorable Judge Ford entered an order making said temporary injunction permanent.

4. None of your petitioners, with the exception of those who were defendants in the injunction cause, named in paragraph 1 hereof, have been served with either the temporary or permanent injunction.

5. On August 19, 1948, Judge Ford entered an order whereby he disqualified himself from sitting in any further proceedings in the aforesaid Chancery Suit No. 570, and thereafter the Honorable Floridus S. Crosby, the defendant herein, was designated by the Chief Justice of the Supreme Court of Appeals of Virginia to preside in any further proceedings therein.

6. On September 21st, 1948, Judge Crosby issued an order requiring your petitioners to appear before the Circuit Court of Page County on September 29, 1948, at 9:30 a.m., and show cause why each and all of them should not be fined, penalized and imprisoned or otherwise punished for contempt of court. Said order was served on your petitioners on or about September 23, 1948.

7. Said order was issued without a hearing, and, to the best of your petitioners' information and belief, without any affidavits or sworn statements preliminary thereto, but

solely on the basis of representations by counsel for Virginia Oak Tannery, Inc., that your petitioners had violated the aforesaid injunction order.

8. Said order to show cause was issued in the aforesaid injunction proceeding Chancery No. 570, on the instance of Virginia Oak Tannery, Incorporated, and with Virginia Oak Tannery, Incorporated, as the sole complainant; and The State of Virginia is not a party to said proceeding, had no knowledge of the order to show cause, and made no application therefor.

9. Said order to show cause contained no intimation as to what actions or conduct the petitioners were charged to have committed or engaged in as constituting violations of the aforesaid injunction or as otherwise constituting contempt of court.

10. Said order was, and any proceedings based thereon would be, erroneous, void, unconstitutional, and without jurisdiction, in that, among other things, it instituted proceedings to imprison or otherwise punish your petitioners without giving them adequate and advance notice of the charges against them, all as established by, among other authorities, *In Re Oliver*, 333 U. S. 257; *Cooke* v. *U. S.*, 267 U. S. 517; *Cole* v. *Arkansas*, 333 U. S. 257, 273; and *Commonwealth* v. *Dandridge*, 2 Va. Cases 408, 427.

11. On September 29, 1948, your petitioners appeared before Judge Crosby pursuant to the order to show cause, and were informed by Judge Crosby and by counsel for Virginia Oak Tannery, Inc., that the proceedings instituted by said order to show cause were for criminal contempt, not civil contempt.

12. Counsel for petitioners moved that said order to show cause be vacated for the reasons, among others, that it was erroneous and void as failing to give adequate notice of the offense charged, and because, under the rulings of

the Supreme Court of Appeals of Virginia, proceedings in criminal contempt must be prosecuted by and in the name of the State, in a proceeding other than the equity proceeding in which the injunction alleged to have been violated was issued, to which the equity complainants are not proper parties, and in which the defendants have the benefit of the rules of criminal evidence and the rule that guilt must be proven beyond a reasonable doubt, all as established, among other authorities, by *Deeds* v. *Gilmer,* 162 Va. 157; *Roanoke Water Works Co.* v. *Roanoke Glass Company, Inc.,* 151 Va. 229; *State* v. *Ralph Snyder,* 34 W. Va. 352; *Kidd* v. *Va. Safe Deposit & Trust Co.,* 113 Va. 612. This motion was denied, and counsel excepted to the ruling of the court.

13. Judge Crosby then informed your petitioners that the trial under the order to show cause would be postponed to a future date, but that a hearing would then and there be held on testimony of the complainant, Virginia Oak Tannery, Inc., as to whether your petitioners should be placed under bond, conditioned that they comply with the aforesaid injunction, until such time as the trial under the order to show cause would be held.

14. Counsel for your petitioners objected for the reasons among others, that the Court had no authority to require such bonds, that petitioners had had no advance notice of any kind that any such hearing would be held, that they had received no advance notice of any charges against them, and that counsel was therefore not in a position to adequately defend them. This objection was overruled, and the ruling of the Court excepted to.

15. Thereafter numerous witnesses produced by Virginia Oak Tannery testified at length concerning, among other things, alleged misconduct on the part of petitioners. A great portion of this testimony was false and perjurious.

16. After Virginia Oak Tannery closed its case, petitioners sought to produce witnesses and introduce evidence, but Judge Crosby ruled that they could not do so. This ruling was objected to, and exception taken to the ruling denying the objection.

17. As a result of the foregoing, the hearing was *ex parte*, without adequate notice to your petitioners, and afforded them no opportunity to defend themselves.

18. Judge Crosby thereupon ended the hearing and on September 30, 1948 entered an order requiring the defendants and each of them, to execute bond on or before October 4, 1948, with adequate surety, in the penalty of three thousand dollars for Local 265 and of one thousand dollars for each of your other petitioners, conditioned for compliance by them with the aforesaid injunction order and for their appearance on October 25, 1948 to defend under the show cause order.

19. Judge Crosby set the trial on the show cause order for the week beginning October 25, 1948, and your petitioners affirm that to their best information and belief the trial thereon will take at least a week.

20. Because of the broad and sweeping provisions of the aforesaid injunction order, the condition for the bonds that petitioners comply with the injunction includes, in effect, a requirement that they keep the peace in all respects.

21. Petitioners are informed and believe that no surety company will become surety on the bonds required as aforesaid unless guaranteed against loss by the posting of collateral or by the indemnification agreement of persons regarded by them as sufficiently responsible financially.

22. Petitioners have extremely limited means, being mostly individual workers, who have been on strike for

many weeks, and their local union, whose treasury is empty.

23. Petitioners are therefore unable to post collateral or otherwise to satisfy any surety company, nor so far as they know, are they able to obtain friends or neighbors who would be willing to be their sureties and whose means are sufficient to make them adequate sureties.

24. Accordingly, petitioners are in imminent danger of being imprisoned on October 5, 1948 and thereafter at least through October 29, 1948 on account of their inability to execute bond, and this on the basis of a proceeding in which, as already stated, they were unable to put on witnesses and of which they had inadequate notice. Petitioners are therefore in imminent danger of being deprived of their liberty without due process of law.

25. The injunction order aforesaid is illegal, void and unconstitutional as violating the freedoms of speech and assembly of those restrained thereby.

26. The petitioners are also imminently threatened with the necessity of defending in a long and expensive trial under the order to show cause in a proceeding which, by reason of the foregoing, is void, erroneous, and unconstitutional. The petitioners are without adequate financial means and will suffer great hardship if forced to undergo such illegal proceedings.

27. Petitioners have no adequate remedy other than a writ of prohibition from this Court.

Wherefore, your petitioners pray that a writ of prohibition be issued to prohibit the defendant herein from keeping in effect or enforcing the said order of September 30, 1948 and from holding any further proceedings under the aforesaid order to show cause. And petitioners also pray that an order issue forthwith suspending said order

of September 30, 1948 and any further proceedings under the aforesaid order to show cause until the final decision in the cause herein. And for such other and further relief as may be just and proper.

Of Counsel:

/s/ J. Lynn Lucas
J. Lynn Lucas,
Luray, Virginia
Attorney for Petitioners

/s/ Joseph Forer
Joseph Forer

State of Virginia,
County of Page, To-wit:

J. Lynn Lucas and Joseph Forer, being first duly sworn, depose and say that the facts recited in the above and foregoing petition are true.

/s/ J. Lynn Lucas

/s/ Joseph Forer

Subscribed and sworn to this 30th day of September, 1948, in the County of Page, Virginia, before me a Notary Public in and for said county.

/s/ Eleanor Hockman Fogelman
Notary Public

My commission expires on the 25th day of July, 1951.

CERTIFICATION OF NOTICE AND SERVICE

I certify that I have served the within and foregoing petition upon the defendant named therein and have given him notice of intention to apply for a writ of prohibition and an order suspending proceedings under the order entered on September 30, 1948 and the order entered September 21, 1948 by mailing to the defendant from Richmond, Virginia, on October 1, 1948, at approximately 12 noon, by special delivery, post prepaid a true copy of said petition and a notice reading as follows:

"To: Honorable Floridus S. Crosby
Staunton, Virginia

"Please take notice that the undersigned will, on October 4, 1948, apply to the Supreme Court of Appeals of Virginia (a) for a writ of prohibition to prohibit you from keeping in effect or enforcing the order entered on September 30, 1948, in the case of Virginia Oak Tannery, Incorporated v. International Fur and Leather Workers Union, Local 265, et al., Chancery No. 570, and from holding any further proceedings under the order to show cause entered in said proceeding on September 21, 1948, and (b) for an order suspending said order and proceedings until final decision in the prohibition cause.

"A copy of the verified petition is enclosed.

"s/ J. LYNN LUCAS

J. LYNN LUCAS
Counsel for Petitioners"

APPENDIX G

VIRGINIA:

IN THE SUPREME COURT OF APPEALS OF VIRGINIA

THEODORE GOOD, JUNIOR KNOTT, WALTER GOCHENOUR, MACEO FRY, CLIFFORD ELLIS, MARSHALL GRIFFITH, BILL CLOUD, EARL PRICE, LEO CAVE, ACY GOOD, IKE KOSTROW, ALBERT ALLEN, RAYMOND ATKINS, ARNOLD GOCHENOUR, WILLIAM GOCHENOUR, GRANVILLE HARLOW, LORING ROTHGEB, BERNARD J. WOOLIS, ELMER WRIGHT, AND LOCAL 265, INTERNATIONAL FUR AND LEATHER WORKERS UNION

v.

FLORIDUS S. CROSBY, JUDGE-DESIGNATE FOR CHANCERY CAUSE NO. 570 IN THE CIRCUIT COURT OF PAGE COUNTY, VIRGINIA

ANSWER OF RESPONDENT TO PETITION FOR WRIT OF PROHIBITION

To the Honorable the Chief Justice and the Justices of the Supreme Court of Appeals of Virginia:

Respondent Floridus S. Crosby, Judge Designate to preside in the Circuit Court of Page County to hear and determine proceeding entitled *Virginia Oak Tannery, Incorporated, complainant* v. *International Fur and Leather Workers Union, CIO, Local 265 &c, Defendants,* for answer to petition for writ of prohibition filed herein on October 2, 1948, to prohibit him from keeping in effect or enforcing an order entered by him on September 30, 1948, directing petitioners to give bond for their compliance with

an injunction order entered in the aforesaid injunction proceeding on June 5, 1948, and perpetuated by order entered on July 26, 1948, and for their appearance in court on October 25, 1948, the petition praying also that an order be issued forthwith in this proceeding suspending said order of September 30, 1948, and also any other proceedings under a show cause order against petitioners which was entered by respondent on September 21, 1948, until final decision of this matter, or in answer to so much of said petition as respondent is advised he should answer, answers and says:

(1) It is true as is alleged in *paragraph 1* of the petition that Honorable William V. Ford, Judge of the Circuit Court of Page County, Virginia, on the 5th day of June, 1948, issued a temporary injunction without notice to the defendants in the injunction proceeding on the complaint of Virginia Oak Tannery, Incorporated, against International Fur and Leather Workers Union, CIO, Local 265, and twenty-four (24) named individuals (Chancery Cause No. 570); and it is true also as is alleged in *paragraph 1* of the petition that none of the petitioners with the exception of said Local 265 and Theodore Good, Junior Knott, Walter Gochenour, Maceo Fry, Clifford Ellis, Marshall Griffith, Bill Cloud, Earl Price, Leo Cave, Acy Good and Ike Kostrow were or are parties to the aforesaid injunction proceeding; the parties named as defendants in the aforesaid injunction proceeding being International Fur and Leather Workers Union, CIO, Local 265, Philip W. Brown, President, Everett Atkins, Vice-President, Palmer B. Judd, Secretary, Theodore Good, Chairman Strike Committee, Clarence Pullen, Steward, Junior Knott, Steward, Walter Gochenour, Maceo Fry, Clifford Ellis, Marshall Griffith, Russell Edwards, Bill Cloud, Austin Comer, Earl Price, Leo Cave, Harvey Steed, Edward Blosser, Acy Good, Lester

Richard, Jack Knight, Ralph Caton and Frank Brownstone, District Supervisor, Ike Kostrow, International Representative, and Edwin Incolingo, International Representative.

(2) Copy of memorandum whereby the aforesaid injunction proceeding was instituted and copies of various pleadings and orders entered in said proceeding and incident thereto, and copy of memorandum opinion by Honorable William V. Ford, Judge of the Circuit Court of Page County, dated July 15, 1948, marked collectively *Exhibit No. 1 with Answer to Petition for Writ of Prohibition*, are filed herewith as a part of this answer.

(3) Transcript of all proceedings at hearing of the aforesaid injunction proceeding upon the merits on June 21-22 ,1948, and of all proceedings incident and subsequent thereto through August 19, 1948, marked *Exhibit No. 2 with Answer to Petition for Writ of Prohibition*, is filed herewith as a part of this answer.

(4) Specimen copies of relevant parts of various exhibits filed by complainant Virginia Oak Tannery, Incorporated, on June 20, 1948, at hearing of the aforesaid injunction proceeding on the merits marked collectively *Exhibit No. 3 with Answer to Petition for Writ of Prohibition*, are filed herewith as a part of this answer.

(5) The aforesaid temporary injunction was granted on June 5, 1948, to prevent unlawful mass picketing and various other unlawful acts by striking employees of Virginia Oak Tannery, Incorporated, and others; and after hearing upon the merits, the temporary injunction was made permanent on July 26, 1948.

2.

It is true as is alleged in *paragraph 2* of the petition, and as appears from the aforesaid injunction order of June 5,

1948, as perpetuated as aforesaid, that said injunction prohibited numerous activities in connection with a labor dispute between Local 265, International Fur and Leather Workers Union, CIO, and said Virginia Oak Tannery, Incorporated, at a plant operated by Virginia Oak Tannery, Incorporated, in Luray, Virginia; said labor dispute being evidenced by a strike then and now under way against Virginia Oak Tannery, Incorporated, by the Union and approximately 260 production employees of the Tannery.

3.

It is true as is alleged in *paragraph 3* of the petition that Honorable William V. Ford, Judge of the Circuit Court of Page County, on the 26th day of June, 1948, entered on order making permanent the aforesaid injunction of June 5, 1948; the said Honorable William V. Ford having previously announced his decision to make said injunction of June 5, 1948, permanent in his aforesaid memorandum opinion dated July 15, 1948, which he forwarded on or about that date to counsel for all parties; copy of said memorandum opinion being a part of *Exhibit No. 1 with this Answer.*

4.

(1) Respondent is not advised of the truth or falsity of the allegation of *paragraph 4* of the petition to the effect that none of the petitioners with the exception of those who were defendants in the aforesaid injunction proceeding have been served with the temporary or permanent injunction order.

(2) Respondent says, however, that the aforesaid injunction order of June 5, 1948, as perpetuated on the 26th day of July, 1948, is directed to all members of the aforesaid Local 265, International Fur and Leather Workers Union,

CIO; and respondent is advised and therefore says that all the individual petitioners for a writ of prohibition were members of said Union on the 5th day of June, 1948, and have been members of said Union continuously since that date and are now members of said Union; and respondent says further that all the petitioners at all times subsequent to June 5, 1948, in any wise material or relevant to the aforesaid injunction proceeding or incident thereto, or in any wise relevant to the petition for writ of prohibition had actual, timely and lawful notice of the injunction order of June 5, 1948, and of the perpetuation thereof on July 26, 1948.

(3) Respondent says further as appears from *Exhibit No. 1* herewith that on the 26th day of July, 1948, after the aforesaid injunction proceeding had been heard *ore tenus* in open court on the merits, and had been perpetuated as aforesaid, the aforesaid Judge of the Circuit Court of Page County on the 26th day of July, 1948, beginning at 7 o'clock p.m. heard sworn statements *ore tenus* in open court by various persons regarding repeated acts of violence and threats of violence, including threats against the lives of certain non-striking employees of Virginia Oak Tannery, Incorporated, and the said Judge of the Circuit Court of Page County thereupon entered an order returnable forthwith against International Fur and Leather Workers Union, CIO, Local 265, Rubin Campbell, Kelley Lucas, Lee Knott, Richard McCoy, June Campbell, George McCoy and William Cubbage, directing them to appear forthwith before the Circuit Court of Page County and show cause why they should not be punished for contempt of court on account of their alleged violation of the aforesaid injunction order of June 5, 1948, as perpetuated on July 26, 1948.

(4) Respondent says further as appears from *Exhibit No. 1 with this Answer* that pursuant to the said show

cause order of July 26, 1948, the said International Fur and Leather Workers Union, CIO, Local 265, Rubin Campbell, Kelley Lucas, Lee Knott, Richard McCoy, June Campbell, George McCoy and William Cubbage, appeared before the Circuit Court of Page County on the 27th day of July, 1948, at 9:30 a.m. and severally gave bond with surety conditioned upon their compliance with the aforesaid injunction order of June 5, 1948, as perpetuated as aforesaid, and upon their appearance in court on the 18th day of August, 1948, for hearing of the aforesaid show cause order upon the merits. Copy of order entered July 27, 1948, requiring the aforesaid bonds is filed as a part of *Exhibit No. 1 with this Answer.*

(5) The return date of the aforesaid show cause order was subsequently continued by the court to August 19, 1948.

5.

(1) It is true as is alleged in *paragraph 5* of the petition that Honorable William V. Ford, Judge of the Circuit Court of Page County, entered an order on August 19, 1948, whereby he disqualified himself from sitting in any further proceedings in the aforesaid injunction proceeding, and that respondent was thereafter designated by the Supreme Court of Appeals of Virginia to preside in any further proceedings had in said injunction proceeding.

(2) The circumstances attending the disqualification of Honorable William V. Ford are set forth in transcript which is filed as *Exhibit No. 2 with this Answer.*

(3) The designation of respondent to preside in the Circuit Court of Page County to hear and determine the proceeding entitled *Virginia Oak Tannery, Incorporated, Complainant* v. *International Fur and Leather Workers Union, CIO, Local 265 &c., Defendants*, appears as a part

of *Exhibit No. 1 with this Answer*, the original designation having been delivered at the office of respondent while respondent was absent on his summer vacation.

(4) On August 31, 1948, respondent wrote R. D. Huffman, Clerk of the Circuit Court of Page County, and directed him to set the aforesaid show cause order of July 26, 1948, for hearing on the merits in said court on September 29-30, 1948; and in the same communication respondent requested said Clerk to give respondent the names of all counsel in the cause and to forward respondent all the papers in the cause.

(5) On September 4, 1948, the Clerk of the Circuit Court of Page County brought all the papers in the cause from Luray to Staunton and delivered them to respondent.

(6) From September 7, 1948, through September 24, 1948, respondent was fully occupied in presiding over the Circuit Court of Rockbridge County at Lexington, and during that time respondent had no opportunity to familiarize himself with the aforesaid cause.

(7) On September 14 or 15, 1948, J. Lynn Lucas, one of counsel for petitioners, telephoned respondent at Staunton or Lexington from Luray and requested that respondent forward him all the papers in the cause; and pursuant to said request, respondent caused all said papers to be delivered to the aforesaid R. D. Huffman at Staunton on September 17, 1948, and directed the said R. D. Huffman to deliver all said papers to J. Lynn Lucas at Luray; and all said papers were promptly delivered by Huffman to Lucas at Luray.

6.

(1) It is true as is alleged in *paragraph 6* of the petition that respondent on the 21st day of September, 1948, issued

an order directing petitioners to appear before the Circuit Court of Page County on September 29, 1948, at 9:30 a.m. and show cause why each and all of them should not be punished for contempt of court on account of their alleged violation of the injunction order of June 5, 1948, as perpetuated on July 26, 1948; and the Sheriff's return will show whether or not the show cause order of September 21, 1948, was served upon petitioners on or about September 23, 1948, as is alleged in *paragraph 6* of the petition.

(2) Sketch for said show cause order was presented to respondent at Staunton on September 21, 1948, by Archibald G. Robertson and John H. Swetnam, counsel for Virginia Oak Tannery, Incorporated, and said sketch when presented had been endorsed with a *pro forma* objection by J. Lynn Lucas, though Archibald G. Robertson advised respondent on September 21, 1948, it was understood between him and J. Lynn Lucas that J. Lynn Lucas reserved all his rights in the premises; but no further objection or exception was urged by J. Lynn Lucas or by any other counsel for petitioners against the aforesaid show cause order of September 21, 1948, prior to September 29, 1948.

(3) The said J. Lynn Lucas had participated in all phases of the injunction proceeding subsequent to June 5, 1948, and in all proceedings incident to said injunction proceeding subsequent to June 5, 1948, and he knew everything that had transpired in all said proceedings, both prior and subsequent to June 5, 1948; but respondent had been afforded no opportunity to familiarize himself with said proceedings and with the voluminous transcript of said proceedings prior to September 21, 1948; and in the circumstances respondent says if counsel for petitioner had any valid objection to the show cause order of September 21, 1948, counsel should have advised the court of such objection prior to September 29, 1948.

7.

(1) It is true as is alleged in *paragraph 7* of the petition that the show cause order of September 21, 1948, was issued by respondent without hearing petitioners and without any affidavit or sworn statement preliminary thereto, but solely upon the basis of representation by counsel for Virginia Oak Tannery, Incorporated, that petitioners had violated and were then continuously violating the injunction order of June 5, 1948, as perpetuated as aforesaid.

(2) Respondent says the representations of counsel for Virginia Oak Tannery, Incorporated, were accepted by respondent as having been made in good faith by responsible officers of the court, and said representations have now been supported by sworn statements of various persons *ore tenus* in open court subject to cross-examination by counsel for petitioners; and respondent says the show cause order of September 21, 1948, was properly issued by the court in the orderly discharge of its duty to enforce the injunction order of the court; and since the court may punish petitioners summarily for contempt on account of violations by them of the injunction order of June 5, 1948, as perpetuated as aforesaid, it necessarily follows that the court of its own motion, or upon affidavit of any person, or upon representation of any counsel in the cause, or in any other circumstances deemed adequate by the court, had the inherent power to issue its show cause order to determine whether petitioners were guilty of contempt of court, and to require the bonds which the court deemed necessary to protect approximately 100 men in their right to work, and maintain order and protect the public safety prior to hearing of the show cause order on the merits. The power to punish summarily for contempt includes the lesser power to require bond pending hearing of a contempt charge upon the merits.

8.

(1) It is true as is alleged in *paragraph 8* of the petition that the show cause order of September 21, 1948, bore the caption of the injunction proceeding which was instituted on June 5, 1948, and that the show cause order of September 21, 1948, was issued at the instance of Virginia Oak Tannery, Incorporated, as sole complainant, and that the State of Virginia was not then a formal party to said proceeding and had no knowledge of the issuance of said order, and made no application for it.

(2) Respondent says, however, that the caption of the order is immaterial as is evidenced by the fact that counsel for petitioners took no exception to the caption when the show cause order of July 26, 1948, was issued with the same caption, and for the reason that on September 29, 1948, the return day of the show cause order of September 21, 1948, petitioners were fully advised of the nature and character of the charges against them when the sworn testimony of various witnesses was taken *ore tenus* in open court and subject to cross-examination by counsel for petitioners, and again on September 30, 1948, when petitioners were furnished a bill of particulars by Virginia Oak Tannery, Incorporated, and hearing of both show cause orders upon the merits was continued to October 25, 1948; and respondent says at the hearing jointly on October 25, 1948, of the show cause order entered by Honorable William V. Ford on July 26, 1948, and the show cause order entered by respondent on September 21, 1948, petitioners will be afforded ample opportunity to be heard, and to interpose every defense available to them; and respondent says the requirement of the order entered on September 30, 1948, that petitioners give bond prior to the hearing on the merits is necessary in the meantime for the protection of the public safety, and is

analogous to a recognizance or to a peace bond required upon a showing that such recognizance or bond is necessary to protect the public safety.

9.

It is true as is alleged in *paragraph 9* of the petition that the show cause order of September 21, 1948, did not specify the actions or conduct constituting alleged violations of the injunction order of June 5, 1948, as perpetuated as aforesaid; and as appears from *paragraph 8* of this answer petitioners have thereby in no wise been prejudiced.

10.

In answer to the allegation of *paragraph 10* of the petition that the show cause order of September 21, 1948, is void, respondent says the show cause order is valid for all the reasons hereinabove set forth in this answer, and under the authorities cited by Honorable William V. Ford in his memorandum opinion dated July 15, 1948, and especially under the decisions in *Robertson* v. *Commonwealth* (1943) 181 Va. 520, and *United States* v. *United Mine Workers of America* (1946) 320 U. S. 258.

11.

It is true as is alleged in *paragraph 11* of the petition that petitioners appeared before respondent pursuant to the show cause order of September 21, 1948, and were informed by respondent and by counsel for Virginia Oak Tannery, Incorporated, that the proceeding was for criminal and not civil contempt.

12.

(1) It is true as is alleged in *paragraph 12* of the petition that on the 29th day of September, 1948, counsel for petitioners moved that the show cause order of September 21, 1948, be vacated upon the grounds set forth in said motion which was filed in writing; and upon argument of said motion counsel for petitioners advanced the same arguments and relied upon the same authorities which are set forth in *paragraph 12* of the petition; and it is also true that the court overruled the motion for the reasons hereinabove set forth and under the authorities hereinabove cited.

(2) The court ruled on September 29-30, 1948, that the injunction order of June 5, 1948, as perpetuated on July 26, 1948, had become final prior to September 29, 1948, under Section 5962a of the Code of Virginia by reason of the fact that more than fifteen (15) days had expired after entry of said orders prior to September 29, 1948, and the term of court at which said orders were entered had ended; and respondent was therefore without authority to modify or rescind said injunction orders; the remedy of respondents if the injunction orders be erroneous being by appeal and not by petition for writ of prohibition.

(3) Respondent says further that said injunction orders are valid unless and until they be adjudicated invalid hereafter upon appeal.

(4) Respondent says also in order for the court to function, the court *ex necessitate* has inherent power and is in duty bound to enforce its orders whether the proceeding in which the orders are entered be pending or ended; and such power is expressly recognized by Section 4521 of the Code of Virginia.

13.

(1) It is true as is alleged in *paragraph 13* of the petition that respondent on September 29-30, 1948, informed petitioners that trial of the show cause order of September 21, 1948, upon the merits would be postponed to a future date, but that a hearing would be held on September 29-30, 1948, upon testimony of Virginia Oak Tannery, Incorporated, to determine whether petitioners should be placed under bond conditioned upon their compliance with the injunction order of June 5, 1948, as perpetuated as aforesaid until hearing of the show cause order upon the merits.

(2) Respondent says the witnesses called by Virginia Oak Tannery, Incorporated, on September 29, 1948, to show that petitioners should be placed under bond conditioned as aforesaid were subjected to cross-examination by counsel for petitioners, and the testimony of such witnesses was more enlightening to the court than affidavits would have been, and convinced respondent that bonds should be required of petitioners to enforce compliance with the injunction orders of the court and thereby protect the public interest prior to hearing upon the merits; and the taking of said testimony safeguarded petitioners far better than would have been done by the acceptance of *ex parte* affidavits; and the procedure which respondent followed was valid and proper in the circumstances.

14.

(1) It is true as is alleged in *paragraph 14* of the petition that petitioners objected and excepted to the procedure which was prescribed by respondent upon the ground that the court had no authority to require the bonds which were ordered to be given; upon the ground that petitioners had not been given advance notice of the nature of the hearing

to be had on September 29-30, 1948; and upon the ground that petitioners had received no advance notice of any charges against them and consequently their counsel could not defend petitioners adequately.

(2) Respondent says the foregoing grounds of objection and exception are without merit in view of the detailed information which was given counsel for petitioners when testimony was taken as aforesaid on September 29, 1948, to enable the court to determine whether it would require the bonds which were prescribed; in view of the bill of particulars which was furnished counsel for petitioners on September 30, 1948; in view of the detailed statement to the court and counsel for petitioners by counsel for Virginia Oak Tannery, Incorporated, in chambers on September 30, 1948, of the further testimony Virginia Oak Tannery, Incorporated, planned to introduce on September 30, 1948, and also at the hearing of the show cause order on the merits; and in view of the continuance of the hearing upon the merits to October 25, 1948.

(3) Respondent says further that on September 29-30, 1948, the court had jurisdiction of the proceeding and of petitioners, and that no writ of prohibition should issue in this proceeding for the reason that the function of a writ of prohibition is solely to test the jurisdiction of the court and not to correct alleged errors of the court which are subject to review upon appeal or writ of error.

15.

(1) It is true as is alleged in *paragraph 15* of the petition that on September 29, 1948, numerous witnesses produced by Virginia Oak Tannery, Incorporated, testified concerning alleged misconduct on the part of petitioners.

(2) It is alleged in *paragraph 15* of the petition that a

great portion of the said testimony was false and fraudulent. If that allegation be true, the remedy is by prosecution for perjury and not by petition for writ of prohibition.

16.

In answer to *paragraph 16* of the petition, respondent says after fifteen (15) witnesses had been produced by Virginia Oak Tannery, Incorporated, and thirteen (13) of them had testified to show that bonds should be required of petitioners, and after counsel for Virginia Oak Tannery, Incorporated, in chambers had outlined to the court and to counsel for petitioners the additional evidence which Virginia Oak Tannery, Incorporated, offered to introduce then to show further that bonds should be required of petitioners under the show cause order of September 21, 1948, and after counsel for petitioners had outlined the testimony petitioners offered to introduce then to show that no bonds should be required of petitioners, respondent was convinced that the bonds which were required in the order of September 30, 1948, should be given, and that no useful purpose would be served by hearing further testimony prior to hearing of both show cause orders upon the merits on October 25, 1948, and the court therefore declined to hear any further testimony prior to said date.

17.

(1) The allegation of *paragraph 17* of the petition that the hearing on September 29, 1948, was *ex parte* does not accord with the facts; and as appears from endorsement of J. Lynn Lucas, one of counsel for petitioners, on sketch for the show cause order which was entered on September 21, 1948, J. Lynn Lucas had notice on September 21, 1948, of the precise order which would be requested returnable

September 29, 1948; and prior to September 29, 1948, J. Lynn Lucas made no request for a bill of particulars or for any specification of the alleged violations of the injunction order, and a reading of the injunction order of June 5, 1948, as perpetuated on July 26, 1948, would necessarily have advised both petitioners and their counsel of the nature and character of the offences charged against petitioners.

(2) Respondent says counsel for petitioners had adequate notice on September 21, 1948, of the hearing to be had on September 29-30, 1948, upon the show cause order of September 21, 1948; and respondent says counsel for petitioners were afforded full opportunity on September 29-30, 1948, to show why the bonds which were required of petitioners should not be required; and continuance of hearing of both show cause orders upon the merits to October 25, 1948, afforded petitioners ample opportunity to interpose all defenses properly available to petitioners.

18.

(1) It is true as is alleged in *paragraph 18* of the petition that respondent on September 30, 1948, ended the hearing to determine whether the bonds which were required should be imposed and entered an order requiring petitioners to execute bond on or before October 4, 1948, with adequate surety in the penalty of $3,000 for Local 265 and $1,000.00 for each individual petitioner conditioned upon compliance by petitioners with the injunction order of June 5, 1948, as perpetuated as aforesaid, and upon their appearances on October 25, 1948, at the hearing of the show cause orders of July 26, 1948, and September 21, 1948, upon the merits.

(2) As appears from the transcript of the proceedings on September 30, 1948, Joseph Forer, one of counsel for petitioners, intimated to the court on September 30, 1948,

that the bonds required would probably be given with corporate surety; and at the request of J. Lynn Lucas the time for giving bond was extended from Saturday, October 2, 1948, to Monday, October 4, 1948, upon suggestion by Joseph Forer that if the officers of the corporate surety companies with which he desired to communicate should be closed on Saturday, petitioners might thereby be deprived of fair opportunity to give the bonds required within the time prescribed.

19.

It is true as is alleged in *paragraph 19* of the petition that respondent set the show cause order of September 21, 1948, and the show cause order of July 26, 1948, for hearing jointly upon the merits beginning Monday, October 25, 1948; and it is probable as is alleged in *paragraph 18* of the petition that hearing of both show cause orders together upon the merits will require at least one week.

20.

(1) The allegation of *paragraph 20* of the petition that the bonds required of petitioners under the show cause order of September 21, 1948, include in effect a requirement that petitioners keep the peace in all respects is untrue and is denied.

(2) The condition of the bonds is that petitioners comply with the injunction order of June 5, 1948, as perpetuated as aforesaid, until hearing of the show cause order of September 21, 1948, upon the merits on October 25, 1948, and that petitioners appear at the hearing of the show cause order upon the merits; and the requirements of the injunction order as perpetuated are clear and unmistakeable.

(3) Respondent says the statements which were heard

ore tenus in open court by Honorable William V. Ford on June 21-22, 1948, and on July 26, 1948, and the testimony which was heard *ore tenus* by respondent on September 29, 1948, in open court, subject to cross-examination by counsel for petitioners, show conclusively that the bonds which were required by Judge Ford and the bonds which were required by respondent should have been required.

21.

(1) Respondent believes it to be true as is alleged in *paragraph 21* of the petition that no surety company will become surety on the bonds required unless guaranteed against loss by the posting of collateral or by indemnification agreement of persons regarded by the surety company as financially responsible.

(2) The transcript of the proceedings on September 29-30, 1948, with accompanying exhibits indicates that International Fur and Leather Workers Union, CIO, as distinguished from Local 265 of that Union can give the bond which has been required of it under the show cause order of September 21, 1948, and if it desires can also furnish acceptable surety upon the bonds of all the other petitioners.

(3) The attitude of said International Fur and Leather Workers Union and of petitioners and of certain others in sympathy with petitioners is indicated by various communications which have been received by respondent from officials of said Union and others since September 30, 1948. Said communications collectively marked *Exhibit No. 5 with Answer to Petition for Writ of Prohibition* are filed herewith for the information of the court.

22.

(1) Respondent is not advised regarding the truth or falsity of the allegation of *paragraph 22* of the petition that petitioners have extremely limited means and that the treasury of International Fur and Leather Workers Union, CIO, Local 265, is empty.

(2) The transcript of the hearing on September 29-30, 1948, with accompanying exhibits, warrants the assumption that International Fur and Leather Workers Union, as distinguished from Local 265 of that Union, has large financial means.

23.

(1) Respondent is not advised regarding the truth or falsity of *paragraph 23* of the petition that petitioners are unable to post collateral or otherwise satisfy any surety company or to obtain individuals whose means are sufficient to make them adequate surety.

(2) The record indicates that representatives of International Fur and Leather Workers Union, CIO, have been active in the conduct of the strike now in effect, and the record does not indicate that any representative of that Union has undertaken to procure bond for any of petitioners.

24.

(1) The petition for writ of prohibition was filed on October 4, 1948, and for that reason respondent on that date entered an order directing that during the pendency of this proceeding in the Supreme Court of Appeals, the order of September 30, 1948, requiring bonds from petitioners be suspended, and said order of October 4, 1948, is now in effect, and no petitioner has given bond as was required by the aforesaid order of September 30, 1948.

(2) Respondent says counsel for petitioners on September 30, 1948, outlined to the court in chambers the testimony for petitioners whereby petitioners sought to demonstrate to the court that no bond should be required from any of petitioners; but respondent was convinced that the bonds which were required should be given to protect approximately 100 non-striking employees of Virginia Oak Tannery, Incorporated, and also to protect the public safety pending a hearing upon the merits.

(4) Respondent says that no petitioner has been prejudiced by any lack of notice of the hearing which was had on September 29-30, 1948, and that no petitioner has been deprived of his liberty without due process of law, or is in danger of being deprived of his liberty without due process of law.

(5) Respondent says Section 4521 of the Code of Virginia authorizes respondent to punish petitioners summarily for contempt on account of their violation of a valid order of the court, and that everything respondent has done was authorized by said provision of the Code, and was a proper exercise by the court of its inherent power and obligation to enforce its own decree.

25.

The allegation of *paragraph 25* of the petition that the injunction order of June 5, 1948, as perpetuated as aforesaid is illegal, void and unconstitutional as violating the freedoms of speech and assembly of those restrained is an allegation of an erroneous conclusion of law; and the injunction of June 5, 1948, as perpetuated as aforesaid, must be obeyed unless and until it be adjudged to be erroneous upon appeal.

26.

(1) The allegation of *paragraph 26* of the petition that petitioners are imminently threatened with the necessity of defending a long and expensive trial under the show cause order of September 21, 1948, in a proceeding which petitioners allege to be void, erroneous and unconstitutional, is without merit if the proceeding, as respondent alleges, is in all respects valid; and in any event the remedy of petitioners is by appeal and petition for writ of error and not by petition for writ of prohibition.

(2) Respondent is not advised of the truth or falsity of the allegations of *paragraph 26* of the petition that petitioners are without financial means and will suffer great hardship if forced to defend the two show cause orders entered on July 26, 1948, and September 21, 1948, respectively.

27.

(1) The allegation of *paragraph 27* of the petition that petitioners have no adequate remedy other than a writ of prohibition is untrue and is denied.

(2) Respondent says the Circuit Court of Page County has jurisdiction of the entire proceeding now under review and of petitioners, and no writ of prohibition may properly be issued in this case; the remedy properly available to petitioners being by appeal from the Circuit Court of Page County, or by petition for writ of error.

28.

WHEREFORE respondent prays judgment whether a writ of prohibition shall be issued to prohibit respondent from keeping in effect or enforcing the aforesaid order of September 30, 1948, and from holding any further proceedings

under the aforesaid show cause order of September 21, 1948, or shall be issued otherwise pursuant to the prayer of the petition.

s/ FLORIDUS S. CROSBY

FLORIDUS S. CROSBY, *Judge Designate for Chancery Cause No. 570 in the Circuit Court of Page County, Va.*

COMMONWEALTH OF VIRGINIA
CITY OF STAUNTON } TO-WIT:

FLORIDUS S. CROSBY, Judge Designate in the Circuit Court of Page County, Virginia, being first duly sworn, deposes and says that the facts recited in the above and foregoing answer are true to the best of his information, knowledge and belief.

s/ FLORIDUS S. CROSBY

FLORIDUS S. CROSBY
Judge Designate, Circuit Court of Page County

Subscribed and sworn to this 11th day of October, 1948, in the City of Staunton, Virginia, before the undersigned Clerk of the Circuit Court of Augusta County, Virginia.

s/ J. M. BLACKBURN
Clerk of the Circuit Court of Augusta County, Virginia

APPENDIX H

Record, Vol. I, 79-89

VIRGINIA:

IN THE CIRCUIT COURT OF PAGE COUNTY

COMMONWEALTH OF VIRGINIA AT THE RELATION OF VIRGINIA OAK TANNERY, INCORPORATED, A CORPORATION,
Complainant

v.

INTERNATIONAL FUR AND LEATHER WORKERS UNION, C I O, LOCAL 265, PHILIP W. BROWN, PRESIDENT, EVERETT ATKINS, VICE-PRESIDENT, PALMER B. JUDD, SECRETARY, THEODORE GOOD, CHAIRMAN STRIKE COMMITTEE, CLARENCE PULLEN, STEWARD, JUNIOR KNOTT, STEWARD, WALTER GOCHENOUR, MACEO FRY, CLIFFORD ELLIS, MARSHALL GRIFFITH, RUSSELL EDWARDS, BILL CLOUD, AUSTIN COMER, EARL PRICE, LEO CAVE, HARVEY STEED, EDWARD BLOSSER, ACY GOOD, LESTER RICHARD, JACK KNIGHT, RALPH CATON, AND FRANK BROWNSTONE, DISTRICT SUPERVISOR, IKE KOSTROW, INTERNATIONAL REPRESENTATIVE, AND EDWARD INCOLINGO, INTERNATIONAL REPRESENTATIVE,

Pursuant to verbal direction of the court Virginia Oak Tannery, Incorporated, on September 30, 1948, furnished a Bill of Particulars to those against whom an order was entered on September 21, 1948, directing them to appear before the Circuit Court of Page County on Wednesday, September 29, 1948, at 9:30 a.m., and show cause why each and all of them should not be punished for contempt of court by reason of their violation of an injunction order entered on June 5, 1948, and perpetuated by order entered on July 26, 1948, and the said hearing of September 29,

1948, having been continued and the matter now being set for October 25, 1948, Virginia Oak Tannery, Incorporated, as and for a Supplement to the aforesaid Bill of Particulars, says:

That Theodore Good has violated the injunction order aforesaid in that he is Chairman of the Strike Committee of Local 265, International Fur and Leather Workers Union, C.I.O. and is therefore responsible for the conduct of the strike at Virginia Oak Tannery, Incorporated, and that he has on many occasions between June 5, 1948 and September 29, 1948, been on the picket line at the Main Street entrance to the said tannery when there were also present at least three other pickets and that he has been present when large numbers of union members have been congregated in the picket line aforesaid and have cursed and threatened persons entering and leaving the tannery and have obstructed the said entrance and that he, Theodore Good, although Chairman of the Strike Committee, has been present at these times and has observed same, he has not tried to stop same but has instead encouraged the members of his union so to do by engaging himself in said activity;

That Junior Knott has been on many occasions between June 5, 1948 and September 29, 1948, in the picket line aforesaid when more than three other persons have also been in said picket line.

That Walter Gochenour, a member of the Strike Committee of Local 265, International Fur and Leather Workers Union, C.I.O. has been on many occasions between June 5, 1948, and September 29, 1948, in the picket line aforesaid when there have been at least three other pickets also there, and that he has on these occasions directed threats and abusive language at employees of said tannery and has by his presence there encouraged the other members of the

said union so to do, and that on or about August 12, 1948, he did threaten Richard Burner;

That Maceo Fry, a member of the Strike Committee of said Local 265, has been on many occasions between June 5, 1948, and September 29, 1948, on said picket line when at least three other pickets were present, and that he has been present when large groups of picketers have threatened, used abusive language and assaulted employees of the tannery and although a member of the Strike Committee has done nothing to stop same and has instead encouraged by his presence there members of Local 265 so to do;

That Marshall Griffith, a member of the Strike Committee of said Local 265, has been on many occasions between June 5, 1948, and September 29, 1948, on said picket line when at least three other pickets were present, and that he has been present when large groups of picketers have threatened, used abusive language and assaulted employees of the tannery and although a member of the Strike Committee has done nothing to stop same and has instead encouraged by his presence there members of Local 265 so to do, and that on or about the second Saturday of August, 1948, he did, while in company with three other strikers accost Roy Griffith in front of Painter's Jewelry Store and threatened Roy Griffith, that on or about September 16, 1948, he did at or near the said Main Street entrance to the tannery assault and batter Monroe Rickard with rocks causing the said Monroe Rickard injury and that he was present and among the pickets at the farm entrance of the said tannery on or about September 17, 1948, when rocks were thrown from the general direction of the said group of pickets at a truck carrying employees of the said tannery, one of said rocks striking Wally Austin on the head and fracturing his skull.

That Clifford Ellis, a member of the Strike Committee of said Local 265, has been on many occasions between June 5, 1948, and September 29, 1948, on said picket line when at least three other pickets were present, and that he has been present when large groups of picketers have threatened, used abusive language and assaulted employees of the tannery and although a member of the Strike Committee has done nothing to stop same and has instead encouraged by his presence there members of Local 265 so to do;

That Bill Cloud, a member of the Strike Committee of said Local 265, has been on many occasions between June 5, 1948, and September 29, 1948, on said picket line when at least three other pickets were present, and that he has been present when large groups of picketers have threatened, used abusive language and assaulted employees of the tannery and although a member of the Strike Committee has done nothing to stop same and has instead encouraged by his presence there members of Local 265 so to do;

That Acy Good, a member of the Strike Committee of said Local 265, has been on many occasions between June 5, 1948, and September 29, 1948, on said picket line when at least three other pickets were present, and that he has been present when large groups of picketers have threatened, used abusive language and assaulted employees of the tannery and although a member of the Strike Committee has done nothing to stop same and has instead encouraged by his presence other members of Local 265 so to do;

That Earl Price, a member of the Strike Committee of said Local 265, has been on many occasions between June 5, 1948, and September 29, 1948, on said picket line when at least three other pickets were present, and that he has been present when large groups of picketers have threatened, used abusive language and assaulted employees of the tan-

nery and although a member of the Strike Committee has done nothing to stop same and has instead encouraged by his presence other members of Local 265 so to do; that he was present and among the pickets at the farm entrance of the said tannery on or about September 17, 1948, when rocks were thrown from the general direction of the said group of pickets at a truck carrying employees of the said tannery, one of said rocks striking Wally Austin on the head and fracturing his skull; and that on or about September 18, 1948, he near Barton's News Stand did in company with three other strikers curse and abuse Earl J. Pettit an employee of the said tannery.

That Leo Cave, a member of the Strike Committee of said Local 265, has been on many occasions between June 5, 1948, and September 29, 1948, on said picket line when at least three other pickets were present, and that he has been present when large groups of picketers have threatened, used abusive language and assaulted employees of the tannery and although a member of the Strike Committee has done nothing to stop same and has instead encouraged by his presence other members of Local 265 so to do; and that on or about September 21, 1948, he did curse Daniel Baldwin, an employee of a corporation whose place of business is within the tannery property.

That Albert Allen has been on many occasions between June 5, 1948, and September 29, 1948, in the picket line aforesaid when more than three other persons have also been in said picket line; and that on or about September 27, 1948 he did follow, in company with three other strikers, Ennis Pullen, an employee of the said tannery and did curse him;

That Raymond Atkins has been on many occasions between June 5, 1948, and September 29, 1948, in the picket

line aforesaid when more than three other persons have also been in said picket line;

That Arnold Gochenour has been on many occasions between June 5, 1948, and September 29, 1948, in the picket line aforesaid when more than three other persons have also been in said picket line; and that on or about September 27, 1948, in company with three other strikers, he followed and abused Ennis Pullen, an employee of the tannery;

That William Gochenour has been on many occasions between June 5, 1948, and September 29, 1948, in the picket line aforesaid when more than three other persons have also been in said picket line;

That Granville Harlow has been on many occasions between June 5, 1948, and September 29, 1948, in the picket line aforesaid when more than three other persons have also been in said picket line; and that on August 19, 1948, and on numerous other occasions he cursed Weldon Painter, night watchman at the said tannery, calling him among other things a "spider-legged son-of-a-bitch", and a "bald-headed scabbing son-of-a-bitch", and that on or about September 27, 1948, he cursed Richard Burner and dared him to get out of his, Richard Burner's car, and that on August 30, 1948, he cursed and threatened David B. Baldwin, an employee of the tannery, at the Main Street entrance picket line; and that on or about August 31, 1948, he cursed and threatened Paul Foley, an employee of the tannery; and that on or about August 21, 1948, he cursed E. P. Vaughn, an employee of the tannery;

That Loring Rothgeb has been on many occasions between June 5, 1948, and September 29, 1948, in the picket line aforesaid when more than three others persons have also been in said picket line; and that on or about September 22, 1948, he cursed Dan Painter, an employee of the tannery, on the courthouse steps in Luray, and that

on or about August 22, 1948, and at other times at night he in company with others, has followed Richard Burner, an employee of the tannery, and that on or about September 27, 1948, in company with three other strikers he did follow Ennis Pullen, an employee of the tannery; and that on or about September 21 and 22, 1948, he, while in the picket line at the Main Street entrance to said tannery, did have a gun and cartridges and did threaten employees, including among others Clyde Fincham, therewith as they came and left the tannery;

That Elmer Wright has been on many occasions between June 5, 1948, and September 29, 1948, in the picket line aforesaid when more than three other persons have also been in said picket line;

That Bernard J. Woolis, International Representative, has been on many occasions between June 5, 1948, and September 29, 1948, in the picket line aforesaid when more than three other persons have also been in said picket line; and that as a leader of the members of Local 265 is an instigator of the conduct which occurs and has been occurring in the various picket lines and has encouraged said members of Local 265 to violate the order of the court.

That Ike Kostrow, International Representative, is a leader among the members of Local 265 and has planned the strike and all actions in connection therewith and is largely responsible for the occurrences in connection therewith; that he has been on many occasions, almost, if not, every day since June 5, 1948, in the picket lines around the property of said tannery when there were at least three other persons in the same picket line; that he has actively and by his presence therein, encouraged the members of Local 265 to congregate on the said picket lines, and has encouraged and advised them to curse and threaten employees who enter and leave said tannery; that he on or

about September 18, 1948, cursed Ennis D. Clark; that he threatened to kill Weldon Painter, an employee of the said tannery; that he cursed Weldon Painter calling him among other things a "god-damned Hitler son-of-a-bitch"; that he on or about September 21, 1948, while in the picket line at the Main entrance cursed Thomas Baldwin, an employee of the tannery; that on or about August 10, 1948, he suggested that the strikers put sand in the gas tanks of employees' cars and knives in their tires; that on or about September 13, 1948, he cursed and threw an apple at Daniel Baldwin, an employee of the tannery who was going home from work; he was in the group of pickets at the farm entrance to the tannery on or about September 17, 1948, when a rock was thrown from the general direction of that group at a truck carrying employees of the tannery and the said rock hit Wally Austin and fractured his skull, and that on or about September 23, 1948, he threatened Floyd C. Cook.

As a part of this Supplement to Bill of Particulars heretofore filed Virginia Oak Tannery, Incorporated, says further that at hearing upon the merits of the aforesaid show cause order of September 21, 1948, Virginia Oak Tannery, Incorporated, will offer proof of all violations of the injunction order of June 5, 1948, as perpetuated on July 26, 1948, which are specified in sworn statements of various persons *ore tenus* in open court before Honorable William V. Ford, Judge of the Circuit Court of Page County, Virginia, on July 26, 1948, and in testimony of various persons in open court before Honorable Floridus S. Crosby, Judge Designate of said Court on September 29, 1948, and in statements of counsel for Virginia Oak Tannery, Incorporated, to Judge Crosby on September 30, 1948, in chambers in the presence of counsel for all those against whom the aforesaid show cause order of September 21, 1948, is directed;

the aforesaid sworn statements, testimony and statements of counsel having been taken stenographically by a court reporter and having been heard by the court in order that the court might determine whether or not to require bond from those named in the aforesaid show cause order and having heretofore been transcribed by said reporter.

Virginia Oak Tannery, Incorporated, says further at hearing of aforesaid show cause orders upon the merits it will offer proof that Local 265, International Fur and Leather Workers Union, C.I.O., since June 5, 1948, has violated the aforesaid injunction order of June 5, 1948, as perpetuated on July 26, 1948, continuously and repeatedly in every respect set forth in the Bill of Particulars heretofor filed and also in every respect set forth in this Supplement to said Bill of Particulars.

Virginia Oak Tannery, Incorporated, reserves the right to amend its Bill of Particulars if, as and when it may be so advised.

VIRGINIA OAK TANNERY, INCORPORATED

By ARCHIBALD G. ROBERTSON
JOHN M. SWETNAM
FRANCIS V. LOWDEN, JR.
Counsel

CERTIORARI DENIED